

IDAHO REAL ESTATE COMMISSION
MEETING MINUTES
May 26, 2021

Pursuant to notice given, the meeting of the Idaho Real Estate Commission (Commission) was held at 615 Oak Street, Sandpoint, Idaho on Wednesday, May 26 at 8:30 a.m.

Commission Members Present:

Mike Gamblin, Chair, Boise
Michael James Johnston, Vice-Chair, Idaho Falls (Zoom)
Jill Stone, Member, Twin Falls
Kim Cooper, Member, Coeur d'Alene
Martin Espil, Public Member, Boise (Zoom)

Comprising a quorum of the Commission

Members Absent:

Staff Present:

MiChell Bird, Executive Director
Melissa Ferguson, Education & Licensing Director
Craig Boyack, Chief Investigator
Jessica Valerio, Administrative Assistant 2
Alice Young, Training Specialist
Saychelle Roberts, Administrative Assistant 1

Others Present:

David Wynkoop, Commission's Legal Counsel (Zoom)
Cindy Hunter, 2021 President, Idaho REALTORS®
See attached list

Introductions:

- a. Commissioners
- b. Staff
- c. Guests

Meeting was called to order at 8:30 a.m. PT by Commission Chair Mike Gamblin.

Approval of Meeting Agenda: Motion was made by Commissioner Kim Cooper to approve the May 26, 2021 adjusted meeting agenda. Motion carried.

Approval of Meeting Minutes: Motion was made by Commissioner Kim Cooper to approve the March 8, 2021 Commission meeting minutes. Motion carried.

Staff Reports:

The following reports were presented for members' review; copies of which are on file at

the Commission office:

- **Financial Report(s) February, March, and April 2021**
- **License Base Analysis**
- **Examination Statistics**
- **Complaint Summary Report**
- **Enforcement Telephone Activity Log(s) February, March, and April 2021**
- **Audit Report(s) February, March, and April 2021**
- **Waiver by State Report**
- **Education & Licensing Telephone Log(s) February, March, and April 2021**
- **New Brokers & Company Report**

Idaho REALTORS®: Cindy Hunter, 2021 Idaho REALTORS® President reported their membership is up to 12,571. Cindy reported the IR Convention will be held in Boise, October 19-22. Cindy reported IR is working with the Governors office on a smart growth plan. She also stated IR will be releasing a new form, RE-34, regarding escalation notice. Cindy reported Tracey Kasper has been elected as 2022 Vice President of IR.

Executive Director's Report:

Employees Recognition – Craig Boyack was presented with a 20-year recognition for his service in the state of Idaho.

Update on Legislation and Division Occupational and Professional Licenses – Director Bird gave an update on the Legislation changes. Director Bird informed licensees both pieces of legislation that were proposed, passed successfully. RS-427-20 involved updating the definition of “business opportunity” and removing inactive portions of the law. The second piece was a clean-up piece that removed language referring to the brokerage’s office policy on agency.

Discussion on Potential Legislation – Director Bird proposed the Commissioners developing draft Legislation on wholesaling. Director Bird also proposed developing the definition of wholesaling as part of the Legislation. Commissioners and staff discussed teams Legislation ideas. Discussion ensued.

Chair Mike Gamblin directed IREC staff to move forward and draft potential Legislation, and work with IR® and Chief Investigator Craig.

Review of Broker Bulletin – Chair Mike Gamblin gives an overview of a Broker Bulletin he would like to publish. Chair Gamblin mentioned including an issue arising of licensees not being able to identify their Designated Broker. Commissioner Kim Cooper suggested to ask Designated Broker.

Enforcement

Stipulations:

Staff vs. Gavin Joel King, Case No. 19-0225: The party's Stipulation in this matter was presented for ex parte hearing and tape-recorded. Nathan Svevad was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill Stone to approve the Stipulation and to enter a "Final Order" in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. Lyndsee Danielle Lee, Case No. 20-0049: The party's Stipulation in this matter was presented for ex parte hearing and tape-recorded. Nathan Svevad was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill Stone to approve the Stipulation and to enter a "Final Order" in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. Peggy Lee Black, Case No. 19-0312: The party's Stipulation in this matter was presented for ex parte hearing and tape-recorded. Nathan Svevad was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill Stone to approve the Stipulation and to enter a "Final Order" in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. Christopher Alan Colligan, Case No. 20-0217: The party's Stipulation in this matter was presented for ex parte hearing and tape-recorded. Nathan Svevad was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill Stone to approve the Stipulation and to enter a "Final Order" in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. Brian Lensing, Case No. 20-0197: The party's Stipulation in this matter was presented for ex parte hearing and tape-recorded. Nathan Svevad was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill Stone to approve the Stipulation and to enter a "Final Order" in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. Kurt Hollenberg and United Country Commercial Auction Services, Case No. 20-0196 and 20-0198: The party's Stipulation in this matter was presented for ex parte hearing and tape-recorded. Nathan Svevad was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill Stone to

approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. Chiutung Tam, Case No. 20-0144: The party’s Stipulation in this matter was presented for ex parte hearing and tape-recorded. Don Morse was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill Stone to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. Richard Craig Groves, Case No. 20-2054: The party’s Stipulation in this matter was presented for ex parte hearing and tape-recorded. Don Morse was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill Stone to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. Paul H. Ryan, Case No. 19-0595 and 20-0244: The party’s Stipulation in this matter was presented for ex parte hearing and tape-recorded. Don Morse was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill Stone to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. Nicholas G. Kanich, Case No. 20-0242: The party’s Stipulation in this matter was presented for ex parte hearing and tape-recorded. Don Morse was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill Stone to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. Marcus & Millichap Real Estate Investment Services of Chicago, Inc., Case No. 20-0243: The party’s Stipulation in this matter was presented for ex parte hearing and tape-recorded. Don Morse was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill Stone to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. Mark Ruble, Case No. 19-0534: The party’s Stipulation in this matter was presented for ex parte hearing and tape-recorded. Don Morse was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill

Stone to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. Marcus & Millichap Real Estate Investment Services, Inc., Case No. 19-0537: The party’s Stipulation in this matter was presented for ex parte hearing and tape-recorded. Don Morse was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill Stone to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Staff vs. William C. Middleton and Marble Creek LLC, Case No. 20-0272 and 20-0370: The party’s Stipulation in this matter was presented for ex parte hearing and tape-recorded. Craig Boyack was sworn in and presented the Stipulation. No other testimony was presented. Motion was made by Commissioner Jill Stone to approve the Stipulation and to enter a “Final Order” in accordance with the terms of the Stipulation. Motion carried. A copy of the Final Order is attached hereto and made a part of these minutes.

Probable Cause Memo #20-0375: A motion was made by Commissioner Michael J. Johnston finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commissioner Michael J. Johnston further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission’s administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission’s “Standard Form for Notice of Hearing and Scheduling Order”, a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Probable Cause Memo #21-0139: A motion was made by Commissioner Michael J. Johnston finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commissioner Michael J. Johnston further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission’s administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice

of Hearing shall be issued in accordance with the Commission's "Standard Form for Notice of Hearing and Scheduling Order", a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Probable Cause Memo #21-0196: A motion was made by Commissioner Michael J. Johnston finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. [Name] further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission's administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission's "Standard Form for Notice of Hearing and Scheduling Order", a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Probable Cause Memo #20-0175 and 20-0176: A motion was made by Commissioner Michael J. Johnston finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commissioner Michael J. Johnston further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission's administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission's "Standard Form for Notice of Hearing and Scheduling Order", a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Probable Cause Memo #21-0114: A motion was made by Commissioner Michael J. Johnston finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commissioner Michael J. Johnston further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission's administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission's "Standard Form for Notice of Hearing and Scheduling Order", a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Probable Cause Memo #21-0133: A motion was made by Commissioner Michael J. Johnston finding the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Idaho Code 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Commissioner Michael J. Johnston further moved that upon the initiation of any formal proceedings the Executive Director shall appoint a Hearing Officer to preside in the case, as provided by law. The Hearing Officer shall have the standard authority set forth in chapter 2 of the Commission's administrative rules, IDAPA 33.01.02.452. Further, for any hearing held, with or without a hearing officer, the Notice of Hearing shall be issued in accordance with the Commission's "Standard Form for Notice of Hearing and Scheduling Order", a copy of which shall be provided to any hearing officer upon appointment. Motion carried.

Executive Session: In accordance with provisions of Idaho Code (74-206(1)(d), a motion was made by Commissioner Kim Cooper to adjourn to executive session. Roll was called, Michael J. Johnston, Mike Gamblin, Jill Stone, Kim Cooper, and Martin Espil voted in favor. Motion carried. No action was taken during executive session.

Regular Session: There being no further purpose for an executive session, a motion was made by Commissioner Kim Cooper to adjourn the executive session and return to open meeting. Motion carried.

Exemption Review #21-008: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1)(g); following discussion, review of the documents submitted, and having reviewed and considered the six factors set forth in Idaho Code Section 54-2012(1)(e)(ii), motion was made by Commissioner Jill Stone to approve request for exemption. Motion carried.

Exemption Review #21-009: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1)(g); following discussion, review of the documents submitted, and having reviewed and considered the six factors set forth in Idaho Code Section 54-2012(1)(e)(ii), motion was made by Commissioner Jill Stone to approve request for exemption. Motion carried.

Exemption Review #21-010: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1)(g); following discussion, review of the documents submitted, and having reviewed and considered the six factors set forth in Idaho Code Section 54-2012(1)(e)(ii), motion was made by Commissioner Jill Stone to approve request for exemption. Motion carried.

Exemption Review #21-011: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1)(g); following discussion, review of the documents submitted, and having reviewed and considered the six factors set forth in Idaho Code Section 54-2012(1)(e)(ii), motion was made by Commissioner Jill Stone to approve request for exemption. Motion carried.

Exemption Review #21-013: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1)(g); following discussion, review of the documents submitted, and having reviewed and considered the six factors set forth in Idaho Code Section 54-2012(1)(e)(ii), motion was made by Commissioner Michael J. Johnston to approve request for exemption. Motion carried.

Exemption Review #21-014: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1)(g); following discussion, review of the documents submitted, and having reviewed and considered the six factors set forth in Idaho Code Section 54-2012(1)(e)(ii), motion was made by Commissioner Michael J. Johnston to table request until the next meeting, pending additional information from the candidate. Motion carried.

Special Consideration #21-012: Request seeking an exemption from felony disqualification pursuant to Idaho Code 54-2012(1) and 54-2012(2)(a)(iii); following discussion, review of the documents submitted, and having reviewed and considered the six factors set forth in Idaho Code Section 54-2012(1)(e)(ii), motion was made by Commissioner Jill Stone to deny request for exemption. Motion carried.

There being no further business, Chair Mike Gamblin adjourned the meeting at 12:49 p.m. PT.

Respectfully submitted,



MiChell Bird
Executive Director

MB:jv

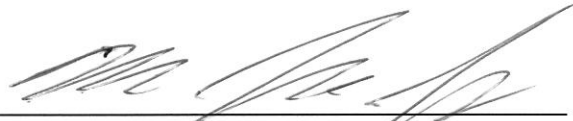
Attachments: Financial Report(s) February, March, and April 2021
License Base Analysis
Examination Statistics

Education & Licensing Telephone Log(s) February, March, & April 2021
Complaint Summary Report
Enforcement Telephone Activity Log(s) February, March, and April 2021
Audit Report(s) February, March, and April 2021
Waiver by State Report
New Brokers & Company Report
Final Orders

Minutes of the Idaho Real Estate Commission meeting on May 26, 2021 are hereby approved.



Mike Gamblin, Chair




Michael J. Johnston, Vice Chair



Kim Cooper, Member



Jill Stone, Member



Martin Espil, Member

BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL
ESTATE COMMISSION,

Petitioner,

vs.

BRIAN LENSING,

Respondent.

FINAL ORDER

On May 26, 2021, the Commission considered the parties' Stipulation wherein Respondent admitted to the following violation of the Real Estate License Law and Rules, Idaho Code:

A. § 54-2002, as defined by 54-2004(39)(a), (c) and (d) and 54-2004(2)): For unlicensed practice by engaging in selling, listing, buying or negotiating, or offering to sell, list, buy or negotiate the business opportunity or interest therein for others, without an Idaho license.

a. Lensing engaged in the unlicensed practice of real estate in Idaho.

Having considered the Stipulation, the Commission approves the same and enters the following order of discipline in accordance therewith.

IT IS HEREBY ORDERED, as follows:

1. **Cease and Desist**

A. Respondent shall cease and desist in engaging in any of the conduct of violations set forth in this Stipulation or any other conduct violating the Idaho Real Estate License Law and rules.

2. **Fines and Fees**

A. Respondent shall pay a **Five Hundred Dollars (\$500.00) civil fine by June 25, 2021.**

B. Respondent shall pay **costs and attorney's fees in the amount of Six Hundred Dollars (\$600.00) by June 25, 2021**, and that in any event, all monies paid by Respondent be applied towards the costs/fees award first, before application to the fine.

C. In the event Staff agrees to accept installment payments of any fine or fees under the Stipulation, should Respondent fail to make any one payment as required by its due date, then all sums remaining unpaid shall at once become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff's right, upon any subsequent failure by Respondent to make a payment on time, to invoke this provision to require immediate and full payment.

D. All fines and attorney's fees are due and payable pursuant to the terms of this Order. Payments must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the dates set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

3. Respondent and Staff of the Idaho Real Estate Commission further agree that the Commission has authorized Staff, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately take action authorized by the Stipulation, including but not limited to, suspending Respondent's license, or imposing the balance of any withheld discipline or civil penalty fine, in the event of failure to timely comply with any term or condition of this Order entered pursuant to **FINAL ORDER – BRIAN LENSING**


the Stipulation. Notice of such action sent to the most current address provided by Respondent to Staff shall be deemed sufficient. Any license suspended under this paragraph may be reinstated by Staff upon proof of compliance with the stipulation term or condition as ordered by the Commission.

4. The Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Final Order without further administrative hearing in the event the Respondent fails to comply with this Final Order entered pursuant to the Stipulation.

5. The Executive Director of the Idaho Real Estate Commission shall cause a true and correct copy of this Final Order to be served on the Respondent by mailing a copy to the Respondent's last known address on file at the Commission office.

Issued this 24 day of May 2021.

FOR THE COMMISSIONERS:



Mike Gamblin, Chair

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 21st day of May 2021, I caused to be served, by the methods indicated, a true and correct copy of the Final Order upon:

Brian Lensing
3600 I-70 Drive SE, Suite A
Columbia, MO 65201

X U.S. Mail
 Email:
 Facsimile Transmission

Eric F. Nelson
Naylor & Hales, PC
950 W. Bannock St. Ste 610
Boise, ID 83702

 U.S. Mail
X Email:
 eric@naylorhales.com
 Facsimile Transmission


Kayla Williams, Administrative Assistant
Staff of the Idaho Real Estate Commission

BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL
ESTATE COMMISSION,

Petitioner,

v.

CHIUTUNG TAM,

Respondent.

Case No. 20-0144

**STIPULATION AND
CONSENT ORDER**

The Idaho Real Estate Commission ("Commission") has received information constituting sufficient grounds for the initiation of an administrative action against Respondent Chiutung Tam aka Marcus Tam, SP36518. Thus, in entering into this Stipulation and Consent Order ("Stipulation"), the parties stipulate and agree to settle this matter in lieu of administrative hearings before the Commission upon the following terms:

1. Respondent Tam is a licensed real estate salesperson holding license number SP36518 with Boise Premier Real Estate in Boise, Idaho. Tam is subject to the jurisdiction and discipline of the Idaho Real Estate Commission.

ALLEGATIONS

2. An Idaho district court entered a civil judgment against Tam finding that he made material misrepresentations to induce investors into a fraudulent Idaho real estate development project. Thereafter, Tam failed to report the judgment to the Commission as required.

FACTUAL BACKGROUND

3. From November 2017 through January 2018, Tam solicited and obtained investments into a real estate development project, Bungalows Meridian, LLC, located in Meridian, Idaho.

4. On December 11, 2019, a group of investors filed a civil complaint in Idaho district court against Tam in his individual capacity and his capacity as a manager, member, and operator of various limited liability companies and assumed business names. The lawsuit alleged, among other things, that Tam defrauded the investors out of \$265,000.00 as part of a fraudulent real estate development project.

5. Tam failed to contest the allegations levied against him in the lawsuit.

6. On March 17, 2020, the district court entered a default judgment against Tam in the amount of \$268,864.00 in Zhang v. MTRE VB2, LLC, Fourth Judicial District for Ada County (Case No. CVOI-19-22433). Because Tam failed to contest the lawsuit, the allegations levied against him in the civil complaint were deemed true as a matter of law. As a corollary, the Court determined that Tam made material misrepresentations in order to induce investors into giving him \$265,000.00 as part of a fraudulent real estate development project. In so doing, the Court determined that Tam engaged in "fraud, theft, conversion, and misappropriation of funds," in that that the "[i]nvestment funds were never allocated to any actual business project or venture."

7. Tam was required to disclose foregoing judgement to the Commission with twenty (20) days. Tam, however, never notified the Commission of the judgment.

STIPULATION& CONSENT ORDER - 2.

VIOLATIONS

8. Respondent's conduct as set forth in this Stipulation violated the following provisions of the Idaho Real Estate License Law:

- a. Idaho Code Section 54-2061(1)(c) - The commission may also take disciplinary action against a licensee including, but not limited to, suspension or revocation of a license, where, in a court of competent jurisdiction, the licensee: Has a judgment entered against the licensee in a civil action upon grounds of fraud, misrepresentation, deceit or gross negligence with reference to a real estate related transaction.
 - A civil judgment was entered against Tam with reference to a fraudulent real estate investment scheme.
- b. Idaho Code Section 54-2061(3): A licensee who is convicted, declared legally incompetent, or who has a judgment entered against him in a civil action as described in subsection (1) of this section, shall, within twenty (20) days of such conviction, declaration or judgment, forward to the commission a copy of the legal document evidencing the same.
 - Tam failed to report the civil judgment entered against him to the Commission as required.

9. This matter came before the Idaho Real Estate Commission at a regularly scheduled meeting and, pursuant to Idaho Code Section 54-2058(1), the Executive Director submitted a Probable Cause Memo alleging Respondent engaged in certain misconduct in violation of the Idaho Real Estate License Law and Rules. After reviewing the Probable Cause Memo, the Commission authorized Staff to pursue formal action against Respondent.

STIPULATED DISCIPLINE

10. Respondent acknowledges and agrees that the following discipline imposed for the violations set forth in this Stipulation is reasonable under the circumstances, although not binding upon the Commission until it issues an Order accepting this Stipulation.

STIPULATION & CONSENT ORDER - 3.

Formal Reprimand:

- a. The Stipulation shall constitute a formal reprimand of Respondent for the actions set forth herein.

License Revocation:

- b. Respondent's real estate license, SP36518, is hereby revoked including any potential renewal or reinstatement rights.

Fines and Fees:

- c. Respondent shall pay the costs and attorney fees in the amount of Six Hundred Dollars (\$600.00) within thirty (30) days of the service date of the Commission's Order. All monies paid by Respondent shall be applied towards the costs and attorney fees award first before application to the civil fine.
- d. In the event Staff agrees to accept installment payments of any fine or fees under this Stipulation, should Respondent fail to timely make any one (1) payment as required by its due date, then all sums remaining unpaid shall immediately become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff's right, upon any subsequent failure by Respondent to make a timely payment, to invoke this provision to require immediate and full payment.
- e. All fines and attorney fees are due and payable pursuant to the terms of the Order issued by the Idaho Real Estate Commission. Payment(s) must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the date(s) set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

ACKNOWLEDGEMENTS AND WAIVERS

In entering into this Stipulation, Respondent (or Respondent's legally authorized representative) acknowledges, understands, and admits the following:

11. This Stipulation is filed pursuant to the provisions of Idaho Code Sections 54-2058, 54-2059 and 54-2063, IDAPA 04.11.01.280.03, and complies with Chapter 52, Title 67, of the Idaho Code.

12. Respondent understands and admits the allegations pending before the Commission as set forth in this Stipulation and has had the opportunity to discuss them with legal counsel. Respondent understands that these allegations constitute cause for disciplinary action upon Respondent's license or ability to practice real estate in the State of Idaho.

13. Respondent voluntarily waives the right to a full and complete hearing regarding all matters set forth in this Stipulation, including the right to reconsideration of the Commission's orders; the right to judicial review of the Commission's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate in the State of Idaho.

14. Respondent agrees that the Commission may impose the disciplinary action set forth in this Stipulation without further process, evidence, or proof. Moreover, the Commission and Staff, without further notice or action otherwise required by the Idaho Code or IDAPA rules, is authorized to enforce all terms of this Stipulation, including, but not limited to, suspending Respondent's license or imposing the balance of any withheld discipline or civil penalty fine in the event Respondent fails to timely comply with any term or provision set forth herein.

15. Respondent agrees that this Stipulation may be presented to the Commission *ex parte* by Staff, and Respondent waives any and all rights to a hearing.

STIPULATION& CONSENT ORDER - 5.

16. In the event the Commission in its discretion does not approve this Stipulation, this Stipulation shall be null and void and shall not be used for any purpose by any party. However, a formal Complaint may be filed against Respondent and a hearing may be held before the Commission to consider the allegations set forth in the Complaint. Under such circumstances, Respondent waives any potential right to challenge the Commission's authority or impartiality to preside over or hear the allegations based on its consideration and rejection of this Stipulation. Respondent does not waive any other rights regarding challenges to Commission members.

17. In the event Respondent fails to comply with any of the terms of this Stipulation, the Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Stipulation without further notice or a hearing.

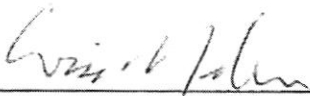
18. Respondent understands and agrees that Respondent may not withdraw or seek to rescind this Stipulation prior to the time the Commission considers and acts upon it.

19. A faxed or scanned executed copy of this Stipulation shall be sufficient and the same as the original signed document.

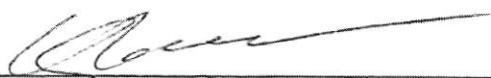
20. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

NAYLOR & HALES, P.C.

Date: 5/4/2021

By 
Eric F. Nelson, Of the Firm
Attorneys for Staff of the Idaho Real
Estate Commission

Date: 5/4/2021

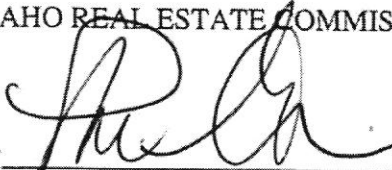

Chiutung Tam

STIPULATION & CONSENT ORDER - 6.

ORDER

Pursuant to Idaho Code §§ 54-2058, 54-2059 and 54-2063, the foregoing is adopted as the decision of the Idaho Real Estate Commission in this matter and shall be effective on the 26 day of MAY, 2021. IT IS SO ORDERED.

IDAHO REAL ESTATE COMMISSION

By 
Commission Chair

CERTIFICATE OF SERVICE


I hereby certify that on the 27th day of May, 2021, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Chiutung "Marcus" Tam
3085 North Cole, Suite 201
Boise, ID 83704

☒ U.S. Mail
☐ Certified Mail, Return Receipt Requested
☐ Fax Transmission

Eric F. Nelson
Naylor & Hales, P.C.
950 W. Bannock St., Ste. 610
Boise, ID 83702

☒ U.S. Mail
☒ Hand Delivered
☐ Email: eric@naylorhales.com
☐ Fax Transmission: 208-383-9516



Kaylan Williams, Administrative Assistant
Staff of the Idaho Real Estate Commission

STIPULATION & CONSENT ORDER - 7.

BEFORE THE IDAHO REAL ESTATE COMMISSION

IDAHO REAL ESTATE COMMISSION,

Petitioner,

v.

CHRISTOPHER ALAN COLLIGAN,

Respondent.

Case No. 20-0217

**STIPULATION AND
CONSENT ORDER**

The Idaho Real Estate Commission ("Commission") has received information constituting sufficient grounds for the initiation of an administrative action against Respondent Christopher Alan Colligan. Thus, in entering into this Stipulation and Consent Order ("Stipulation"), the parties stipulate and agree to settle this matter in lieu of administrative hearings before the Commission upon the following terms:

1. Colligan is a licensed real estate salesperson holding license number SP47410 for Tomlinson Sotheby's International Realty in Coeur d'Alene, Idaho. Colligan is subject to the jurisdiction and discipline of the Idaho Real Estate Commission.

PARTIES

2. Rhonda and Andrew Sweatman, at all times relevant to this Stipulation, owned a property located at 202 W. 15th Avenue in Post Falls, Idaho ("Post Falls" property). Colligan represented the Sweatmans in their attempts to both sell their property and purchase another.

3. Joseph and Laura Branch unsuccessfully attempted to sell their property, located at 880 Outback Loop in Spirit Lake, Idaho ("Outback Loop"), to the Sweatmans.

4. Christopher Jones unsuccessfully attempted to purchase the Post Falls property from the Sweatmans while also trying to sell his property located in California. At all times relevant to this Stipulation, Jones was represented by Scott Smith of Coldwell Banker Schneidmiller in his attempt to purchase the Post Falls property.

5. Scott Smith is a licensed real estate salesperson affiliated with Coldwell Banker Schneidmiller. At all times relevant to this Stipulation, Smith represented Jones in his unsuccessful attempt to purchase the Post Falls property from the Sweatmans.

ALLEGATIONS

6. Colligan represented the Sweatmans in their attempt to sell their Post Falls property to Jones while also attempting to purchase the Outback Loop property from the Branches. With respect to the Post Falls property, Colligan failed to prepare a counteroffer on behalf of the Sweatmans even though they specifically asked him to do so. With respect to the Outback Loop property, Colligan failed to include requested terms in a contract termination he drafted and submitted on behalf of the Sweatmans.

FACTUAL BACKGROUND

7. At all times relevant to this Stipulation, Colligan represented the Sweatmans in their attempts to sell their Post Falls property to Jones and purchase the Outback Loop property from the Branches.

Outback Loop Property: Sweatmans as Buyers

8. On May 5, 2020, Colligan entered into a Buyer Representation Agreement with the Sweatmans, which they signed electronically.

9. On May 21, 2020 Joseph and Laura Branch listed their Outback Loop property for sale for \$142,500.00.

10. Later that same day, on May 21, 2020, Colligan, acting on behalf of the Sweatmans, submitted a \$142,000.00 offer to the Branches for the Outback Loop property. The Sweatmans electronically signed this offer, which was contingent on them selling their own property. The Branches accepted the Sweatmans offer the same day.

Post Falls Property: Sweatmans as Sellers

11. On May 13, 2020, Colligan prepared a Seller Representation Agreement for the Sweatmans listing their Post Falls property for \$389,000.00. This agreement was to begin the following day and end on October 16, 2020. The Sweatmans electronically signed the agreement on May 14, 2020, and Colligan signed it on May 15, 2020.

12. On June 3, 2020, the Sweatmans electronically signed an addendum lowering the price of their Post Falls property to \$381,000.00.

13. On June 17, 2020, Jones submitted to an offer to purchase the Sweatmans' Post Falls property, which the Sweatmans wanted to counter. Specifically:

- a. At 8:49 a.m., Smith, acting on behalf of his buyer client, Jones, emailed a \$350,000.00 cash offer to Colligan for the Post Falls property. This offer was contingent on Jones selling his California property, which he indicated was scheduled to close by July 31, 2020. Jones' offer stated that the Sweatmans needed to respond by at 10:00 a.m. that same day.

- b. At 9:09 a.m., Colligan emailed Smith and confirmed that he received Jones' offer. He also asked whether Smith realized that he had only provided the Sweatmans with a fifty-one (51)-minute acceptance period.
- c. In the evening, Colligan discussed Jones' offer with the Sweatmans. As a result of the associated contingency, Colligan expressed reservations about Jones' offer. Nonetheless, the Sweatmans informed Colligan that they wanted to submit a counteroffer and discussed the terms they wished to include. As a result of this conversation, they assumed Colligan would prepare and submit a counteroffer on their behalf.

14. On June 18, 2020, Smith sent Colligan several text messages and indicated, among other things, that it appeared likely that the pending sale of Jones' California property would successfully close. He also stated that he could provide Colligan with an executed copy of the purchase and sale agreement for Jones' property. Later that same day, Smith sent Colligan another text and stated that Jones hoped to receive a "response fairly soon" to his offer to purchase the Post Falls property.

15. On June 19, 2020, Colligan sent Smith a text message and asked about the status of obtaining the purchase and sale agreement for Jones' California property. Smith responded and said he was working to obtain one.

16. On June 20, 2020, the Sweatmans sent Colligan a text message and asked if he had responded to Jones' offer and submitted a counteroffer on their behalf. Colligan responded as follows: "I have not sent it. I am still waiting for the documentation and evidence that [Jones'] contingent sale [of his California property] is under contract." At that point, Colligan did not

prepare a counteroffer for the Sweatmans and instead focused on investigating the viability of the sale of Jones' California property.

17. On June 20 and June 21, 2020, Colligan and Smith exchanged several emails about the status of the California property transaction. Smith confirmed that he had been informed that the property was under contract and would close as scheduled. However, Smith said he would "double check" and respond shortly. Smith also asked whether the Sweatmans intended to counter Jones' offer to purchase the Post Falls property. Colligan responded and expressed concerns with the status of the sale of Jones' California property.

18. On June 22, 2020, Colligan sent the Sweatmans a text message and updated them on his correspondence with Smith and stated that he still had not received any documentation showing that Jones' California property was under contract.

19. On June 23, 2020, the Sweatmans contacted Colligan and stated that they were interested in potentially purchasing an alternative property and therefore requested that he set up a time where they could visit it. Colligan responded by stating, in part: "Your priority should be finding a market price for [the Post Falls property] that gets you showings and offers."

20. On June 24, 2020, Andrew Sweatman sent Colligan a text message and stated, in pertinent part, as follows:

Our priority is selling the [Post Falls property], and to find a backup property in case the offer on [the Outback Loop property] expires before 7/10. Which is very likely.

We have been available to show at every instance, & after time we have dropped list price as we all agreed 8k was a good amount to do so. (Have other previous showings been informed of price reduction?)

An offer came in after [lowering the] list price .. Have you found any further proof of [Jones' California property transaction]?

Have you submitted [a] counter on the current offer?

Have you been in recent communication with parties [to] the offer? What do they say about their progress?

21. In response to the foregoing text, Colligan stated he was still trying to obtain more information about the potential sale of Jones' California property. He did not, however, address the counteroffer.

22. On June 25, 2020, Colligan sent the Sweatmans a text message informing them that the Branches, who were under contract to sell their Outback Loop property to the Sweatmans, wished to terminate the contract. The Branches wanted to instead move forward with an all-cash backup offer. Colligan relayed this information to the Sweatmans, and they stated that they would terminate the contract so long as (1) their earnest money was returned to them; and (2) the Branches paid the \$200.00 cancelation fee with the title company. Colligan stated he would relay the terms to the Branches. He also said he could "work up the counter[offer] of your choosing" as it relates Jones' offer, but reiterated his concerns about the status of Jones' California property transaction. Nonetheless, Colligan stated, "If you still want to counter [Jones' offer], tell me what you want to counter."

23. On June 26, 2020, the Sweatmans sent Colligan a text message and stated that they had already informed him of the terms of the counteroffer they wanted to provide to Jones. They reiterated that they wanted him to submit a \$365,000.00 counteroffer with "no Covid hold." Thus, they again instructed Colligan to submit the counteroffer that day based on their specified terms. Colligan responded by stating that the "counter will be sent to you shortly."

STIPULATION AND CONSENT ORDER - 6.

24. Later that same day on June 26, 2020, Colligan sent the Sweatmans what he called a "draft" counteroffer, however, he did not provide a means for them to electronically sign it. (Up to that point, the Sweatmans had electronically signed all documents.) The Sweatmans responded via text and stated that the "Counter draft looks good." Colligan replied and, without addressing the counteroffer, asked the Sweatmans about their financing for purchasing a new property. As a result, the Sweatmans assumed Colligan would provide them with a finalized counteroffer as Colligan did not need financing details for a separate transaction to prepare or submit their counteroffer.

25. On June 29, 2020, the Sweatmans sent Colligan a text message and stated that although they had been provided a draft counteroffer, they still had not been provided a counteroffer they could sign. Colligan responded: "You never gave me feedback on what [your lender] had to say." He also stated that he had still not received any documentation showing that Jones' California property was under contract or scheduled to close.

26. On July 10, 2020, the Sweatmans canceled their Post Falls property listing.

27. On July 11, 2020, Colligan prepared, and the Sweatmans electronically signed, a Contract Termination and/or release of Earnest Money form terminating their contract to purchase the Outback Loop property and releasing their earnest money back to them. In preparing the contract termination, however, Colligan failed to include a provision requiring the Branches to pay the \$200.00 cancellation fee with the title company.

VIOLATIONS

28. Respondent's conduct as set forth in this Stipulation violated the following laws governing the practice of real estate in Idaho:

- a. Idaho Code Section 54-2086 (1) (a): If a buyer, prospective buyer, or seller is not represented by a brokerage in a regulated real estate transaction, that buyer or seller remains a customer, and as such, the brokerage and its licensees are nonagents and owe the following legal duties and obligations: To perform ministerial acts to assist the buyer or seller in the sale or purchase of real estate.
 - Colligan failed to timely prepare or submit a counteroffer to Jones' offer to purchase their Post Falls offer despite being asked to by his seller clients, the Sweatmans.
- b. Idaho Code Section 54-2087 (2): If a buyer or seller enters into a written contract for representation in a regulated real estate transaction, that buyer or seller becomes a client to whom the brokerage and its licensees owe the following agency duties and obligations: To exercise reasonable skill and care.
 - Colligan failed to timely prepare and submit a counteroffer on behalf of his clients even though they had asked him to do so. He also failed to include requested terms in a contract termination he drafted and submitted on behalf of his clients.
- c. Idaho Code Section 4-2087 (4) (b): If a buyer or seller enters into a written contract for representation in a regulated real estate transaction, that buyer or seller becomes a client to whom the brokerage and its licensees owe the following agency duties and obligations: Seeking a buyer to purchase the seller's property at a price, and under terms and conditions acceptable to the seller and assisting in the negotiation therefor.
 - Colligan failed to timely prepare or submit a counteroffer to Jones' offer to purchase their Post Falls offer despite being asked to by his seller clients, the Sweatmans.

29. This matter came before the Idaho Real Estate Commission at a regularly scheduled meeting and, pursuant to Idaho Code Section 54-2058(1), the Executive Director submitted a Probable Cause Memo alleging Respondent engaged in certain misconduct in violation of the Idaho Real Estate License Law and Rules. After reviewing the Probable Cause Memo, the Commission authorized its agent, Staff, to pursue formal action against Respondent.

STIPULATION AND CONSENT ORDER - 8.

STIPULATED DISCIPLINE

30. Respondent acknowledges and agrees that the following discipline imposed for the violations set forth in this Stipulation is reasonable under the circumstances, although not binding upon the Commission until it issues an Order accepting this Stipulation.

Formal Reprimand

- a. This Stipulation shall constitute a formal reprimand of Respondent for the actions set forth herein.

Fines and Fees:

- b. Respondent shall pay a One Thousand Dollar (\$1000.00) civil fine within thirty (30) days of the service date of the Commission's Order.
- c. Respondent shall pay the costs and attorney fees in the amount of Six Hundred Dollars (\$600.00) within thirty (30) days of the service date of the Commission's Order. All monies paid by Respondent shall be applied towards the costs and attorney fees award first before application to the civil fine.
- d. In the event Staff agrees to accept installment payments of any fine or fees under this Stipulation, should Respondent fail to timely make any one (1) payment as required by its due date, then all sums remaining unpaid shall immediately become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff's right, upon any subsequent failure by Respondent to make a timely payment, to invoke this provision to require immediate and full payment.
- e. All fines and attorney fees are due and payable pursuant to the terms of the Order issued by the Idaho Real Estate Commission. Payment(s) must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the date(s) set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

Continuing Education:

- f. Respondent shall successfully complete the following Idaho real estate educational course(s) within one hundred eighty (180) days after the service date of the Commission's Order:
- Agency
 - Risk Management
- g. **These course(s) shall be completed on or before 5:00 p.m. MST/MDT of the deadline day. In addition, within forty-eight (48) hours of completing said courses, Respondent shall be responsible for mailing, emailing, or faxing (208-334-2050) a copy of the completion certificate(s) to the Idaho Real Estate Commission, Attention: Chief Investigator. Should Respondent fail to provide Commission Staff with a completion certificate on or before the deadline, Respondent's real estate license shall be suspended pursuant to the terms of the Commission's Final Order.**
- h. Respondent is on notice that pursuant to Idaho Code Section 54-2023(5): "No licensee shall obtain continuing education credit for education ordered by the commission as part of a disciplinary action." **Respondent shall not submit such commission-ordered educational courses for continuing education credit.**

ACKNOWLEDGEMENTS AND WAIVERS

In entering into this Stipulation, Respondent (or Respondent's legally authorized representative) acknowledges, understands, and admits the following:

31. This Stipulation is filed pursuant to the provisions of Idaho Code Sections 54-2058, 54-2059 and 54-2063, IDAPA 04.11.01.280.03, and complies with Chapter 52, Title 67, of the Idaho Code.

32. Respondent understands and admits the allegations pending before the Commission as set forth in this Stipulation and has had the opportunity to discuss them with legal counsel.

Respondent understands that these allegations constitute cause for disciplinary action upon Respondent's license or ability to practice real estate in the State of Idaho.

33. Respondent voluntarily waives the right to a full and complete hearing regarding all matters set forth in this Stipulation, including the right to reconsideration of the Commission's orders; the right to judicial review of the Commission's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate in the State of Idaho.

34. Respondent agrees that the Commission may impose the disciplinary action set forth in this Stipulation without further process, evidence, or proof. Moreover, the Commission and Staff, without further notice or action otherwise required by the Idaho Code or IDAPA rules, is authorized to enforce all terms of this Stipulation, including, but not limited to, suspending Respondent's license or imposing the balance of any withheld discipline or civil penalty fine in the event Respondent fails to timely comply with any term or provision set forth herein.

35. Respondent agrees that this Stipulation may be presented to the Commission *ex parte* by Staff, and Respondent waives any and all rights to a hearing.

36. In the event the Commission in its discretion does not approve this Stipulation, this Stipulation shall be null and void and shall not be used for any purpose by any party. However, a formal Complaint may be filed against Respondent and a hearing may be held before the Commission to consider the allegations set forth in the Complaint. Under such circumstances, Respondent waives any potential right to challenge the Commission's authority or impartiality to preside over or hear the allegations based on its consideration and rejection of this Stipulation. Respondent does not waive any other rights regarding challenges to Commission members.

STIPULATION AND CONSENT ORDER - 11.

37. In the event Respondent fails to comply with any of the terms of this Stipulation, the Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Stipulation without further notice or a hearing.

38. Respondent understands and agrees that Respondent may not withdraw or seek to rescind this Stipulation prior to the time the Commission considers and acts upon it.

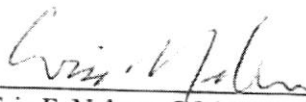
39. A faxed or scanned executed copy of this Stipulation shall be sufficient and the same as the original signed document.

40. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

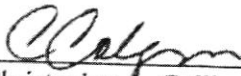
NAYLOR & HALES, P.C.

Date: 5/10/2021

By


Eric F. Nelson, Of the Firm
Attorneys for Staff of the Idaho Real
Estate Commission

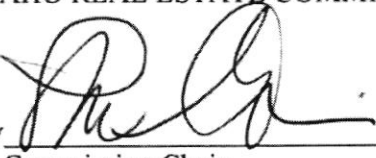
Date: 05/10/2021


Christopher A. Colligan

ORDER

Pursuant to Idaho Code §§ 54-2058, 54-2059 and 54-2063, the foregoing is adopted as the decision of the Idaho Real Estate Commission in this matter and shall be effective on the 26 day of MAY, 2021. IT IS SO ORDERED.

IDAHO REAL ESTATE COMMISSION

By 
Commission Chair

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May, 2021,
I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Alan "Chris" Colligan
Tomlinson Sotheby's
International Realty
223 East Sherman
Coeur d'Alene, ID 83814

☒ U.S. Mail
☐ Certified Mail, Return Receipt Requested
☐ Fax Transmission

Eric F. Nelson
Naylor & Hales, P.C.
950 W. Bannock St., Ste. 610
Boise, ID 83702

☐ U.S. Mail
☐ Hand Delivered
☒ Email: eric@naylorhales.com
☐ Fax Transmission: 208-383-9516


Kaylan Williams, Administrative Assistant
Staff of the Idaho Real Estate Commission

BEFORE THE IDAHO REAL ESTATE COMMISSION

IDAHO REAL ESTATE COMMISSION,

Petitioner,

v.

GAVIN JOEL KING,

Respondent.

Case No. 19-0225

STIPULATION & CONSENT ORDER

The Idaho Real Estate Commission ("Commission") has received information constituting sufficient grounds for the initiation of an administrative action against Respondent Gavin Joel King. Thus, in entering into this Stipulation and Consent Order ("Stipulation"), the parties stipulate and agree to settle this matter in lieu of administrative hearings before the Commission upon the following terms:

1. Respondent Gavin J. King is a licensed designated broker holding license number DB28403 for Realty In Idaho in Middleton, Idaho. King is subject to the jurisdiction and discipline of the Idaho Real Estate Commission.

PARTIES

2. Royal and Jordan Wilde ("Buyers") purchased a property located at 305 Quail Cove Circle, Middleton, Idaho ("Quail Cove" property). King represented Buyers in the transaction.

ALLEGATIONS

3. King engaged in the following violations of the Idaho Real Estate License Law:
- a. Failed to disclose adverse material facts about the Quail Cove property to his Buyer clients until after closing even though such facts had previously been disclosed on the property's MLS listing;
 - b. Failed to timely provide Buyers with the Agency Disclosure Brochure;

STIPULATION AND CONSENT ORDER - 1.

- c. Failed to accurately disclose his relationship to Buyers in the representation confirmation section of all of the Purchase and Sale Agreements he prepared for Buyers;
- d. Advertised numerous Idaho properties for sale while his real estate license was on inactive status; and
- e. Failed to timely renew his statutorily-required Errors and Omissions ("E&O") insurance policy.

FACTUAL BACKGROUND

Quail Cove Property Transaction

4. On May 6, 2018, Jose and Josephina Salivar ("Sellers"), who owned Quail Cove property, listed their property for sale. In so doing, Sellers filled out a Mold Disclosure form encouraging potential buyers to obtain a mold inspection as part of any purchase transaction. Sellers also filled out a Property Condition Disclosure form, which stated there had been water intrusion or moisture related damage to the home through a cracked front bay window. The disclosure form also expressed Seller's uncertainty about the condition of the home's roof and siding but noted that it had been treated by an exterminator.

5. On June 18, 2018, the Seller's listing agent uploaded all the disclosure forms related to the Quail Cove property to the local MLS, including the Mold Disclosure and Property Condition Disclosure forms.

6. On or before August 10, 2018, King began representing Buyers in their attempts to purchase a home and submitted an offer on Buyers' behalf to purchase a property located in Caldwell, Idaho. The offer, however, was not accepted.

7. On August 17, 2018, Buyers signed an Agency Disclosure Brochure that King provided to them. King, however, was required by law to provide Buyer with the Agency

STIPULATION AND CONSENT ORDER - 2.

Disclosure Brochure at the first substantial business contact, which occurred at least seven (7) days earlier.

8. Also on August 17, 2018, King prepared and submitted two (2) purchase offers on Buyer's behalf. These offers included the following:

- a. An offer to purchase a property located in Wilder, Idaho. The offer indicated that King was working with Buyers as an agent. The offer, however, was not accepted.
- b. An offer to purchase the Quail Cove property for \$190,000.00. The offer indicated King was the responsible broker and Buyers' agent, although King never entered into a Buyer's Representation Agreement with them. Sellers submitted a \$199,000.00 counter offer, which disclosed the existence of subterranean termites in the area and an offer to pay for a one (1)-time treatment.

9. On August 19, 2018, Buyers accepted Sellers' counter offer, and the parties entered into a contract for the Quail Cove property.

10. Buyers, who are a father and son, did not want to pay for a home inspection. As a result, they arranged to have the father's significant other, Sarah Buckley, perform the inspection. On August 21, 2018, Buckley asked King for assistance with the inspection, however, he declined.

11. On August 31, 2018, the Buyers' lender informed King that the Quail Cove property had been appraised for \$200,000.00, however, it needed to be reinspected after some peeling paint and a missing electrical faceplate were addressed.

12. On September 4, 2018, King contacted Seller's agent, John Auw, and informed him that Sellers needed to address peeling paint and a missing electrical faceplate at the Quail Cove property. King, however, did not discuss or request any additional repairs.

13. On September 21, 2018, the Quail Cove property transaction closed. Later that same day after closing, King emailed Buyers and, for the first time, provided them with Sellers' Mold Disclosure and Property Condition Disclosure forms, which Sellers signed on May 6, 2018. King requested that Buyers sign the disclosure forms, which they did that same day. Because King previously failed to provide these forms to Buyers, this was the first time they were made aware of the potential mold, moisture damage, and uncertain condition of the roof at the Quail Cove property. Notably, some of the items set forth on the disclosure forms could have justified renegotiation or cancellation of Buyers' contract with Sellers.

14. At the time the transaction closed, Sellers were renting the Quail Cove property to tenants, who continued to occupy the property shortly after closing. After Buyers removed the tenants and began moving, they discovered that the tenants had damaged the property. Additionally, the furnace and water heater were not functioning, the roof needed to be replaced, and portions of the home were flooded. Buyers subsequently submitted an insurance claim to address the damage, however, their insurance carrier denied the claim because the property's bay window had previously been repaired in a substandard fashion. In total, Buyers assert that the Quail Cove property required over \$100,000.00 in repairs.

Unlicensed Practice of Real Estate

15. On July 10, 2019, Staff of the Idaho Real Estate Commission ("Staff") placed King's real estate license on inactive status after he failed to comply with the Commission's

continuing education requirements or respond to a continuing education audit. King's license was not placed on active status again until July 25, 2019.

16. On July 15, 2019, Staff examined King's online advertising as part of its investigation. Staff discovered that King was marketing and advertising at least fifteen (15) Idaho properties for sale on the MLS even though his real estate license was on inactive status. Specifically, King was advertising four (4) lots in Crouch, Idaho and eleven (11) residential units in Nampa, Idaho for sale.

Failing to Maintain Statutorily-Required Insurance

17. On September 30, 2020, King's statutorily-required E&O insurance policy expired. This was the fourth time King allowed his insurance policy to lapse. The Commission had already disciplined Respondent on three (3) separate occasions for previously failing to maintain his insurance.

18. On October 1, 2020, King renewed his E&O insurance policy.

19. On October 6, 2020, the Commission's Education/Licensing Department mailed a letter to King and notified him of the lapse in his insurance coverage. In so doing, the Commission offered Respondent the opportunity to either sign a form Stipulation and pay a civil fine or request a formal hearing before the Commissioners. Respondent, however, failed to respond.

20. On January 14, 2021, the Commission's Enforcement Department mailed Respondent a second letter and again offered him the opportunity to either sign a form Stipulation and pay a civil fine or request a formal hearing before the Commissioners. The letter also noted that "[f]ailure to sign and return the Stipulation within two weeks . . . will be treated as a request for a formal hearing." Once again, Respondent failed to respond.

VIOLATIONS

21. Respondent's conduct as set forth in this Stipulation violated the following laws governing the practice of real estate in Idaho:

- a. Idaho Code § 54-2002 as defined by 54-2004(2)(39)(a), (c), and (d): No person shall engage in the business or act in the capacity of real estate broker or real estate salesperson without an active Idaho real estate license.
 - King continued to advertise properties for sale while his real estate license was on inactive status.
- b. Idaho Code § 54-2013(1) and IDAPA 24.37.01.117 and 24.37.01.121: Each actively licensed licensee shall carry and maintain errors and omissions insurance to cover all licensed activities and will certify compliance with this insurance requirement to the Commission.
 - King failed to maintain statutorily-required errors and omissions insurance while his license was on active status.
- c. Idaho Code § 54-2060 (12): A person found guilty of misconduct while performing or attempting to perform any act requiring an Idaho real estate broker or salesperson's license, regardless of whether the act was for the person's own account or in his capacity as broker or salesperson, shall be subject to disciplinary action by the commission. The following acts shall constitute misconduct within the meaning of this section: Gross negligence or reckless conduct in a regulated real estate transaction. Conduct is grossly negligent or reckless if, when taken as a whole, it is conduct which substantially fails to meet the generally accepted standard of care in the practice of real estate in Idaho.
 - King was grossly negligent when he failed to provide Sellers' Mold Disclosure and Property Condition Disclosure forms to Buyers until after closing.
- c. Idaho Code § 54-2085 (1): A licensee shall give to a prospective buyer or seller at the first substantial business contact the agency disclosure brochure adopted or approved by the Idaho real estate commission. The commission by motion shall establish the form and contents of the brochure in accordance with the provisions of this chapter. Each brokerage shall keep a signed and dated record of a buyer or seller's receipt of the agency disclosure brochure.

- King failed to provide the Agency Disclosure Brochure to Buyers at his first substantial business contact with them.
- d. Idaho Code § 54-2085 (3): A brokerage's relationship with a buyer or seller as an agent, nonagent, limited dual agent, or limited dual agent with assigned agents, must be determined and all necessary agreements executed no later than the preparation of a purchase and sale agreement. A brokerage must disclose its relationship to both buyer and seller in any transaction no later than the preparation or presentation of a purchase and sale agreement.
- King incorrectly filled out the representation confirmation section of all of the Purchase and Sale Agreements he prepared for Buyers.
- e. Idaho Code § 54-2085 (5): The failure of a licensee to timely give a buyer or seller the agency disclosure brochure or the failure of a licensee to properly and timely obtain any written agreement or confirmation required by this chapter shall be a violation of the Idaho real estate license law and may subject the licensee to disciplinary action according to the provisions of sections 54-2058 through 54-2078, Idaho Code.
- King failed to provide the Agency Disclosure Brochure to Buyers at his first substantial business contact with them.
- f. Idaho Code § 54-2086 (1) (a): If a buyer, prospective buyer, or seller is not represented by a brokerage in a regulated real estate transaction, that buyer or seller remains a customer, and as such, the brokerage and its licensees are nonagents and owe the following legal duties and obligations: To perform ministerial acts to assist the buyer or seller in the sale or purchase of real estate.
- King failed to ensure Buyers received the Seller's Property Condition Disclosure form within the required ten (10)-day period and failed to provide this document to Buyers until after closing.
- g. Idaho Code § 54-2086 (1) (b): If a buyer, prospective buyer, or seller is not represented by a brokerage in a regulated real estate transaction, that buyer or seller remains a customer, and as such, the brokerage and its licensees are nonagents and owe the following legal duties and obligations: To perform these acts with honesty, good faith, reasonable skill and care.
- King failed to exercise reasonable skill and care by failing to ensure Buyers received the Seller's Property Condition Disclosure form within the required ten (10)-day period.

- h. Idaho Code § 54-2086 (1)(d): If a buyer, prospective buyer, or seller is not represented by a brokerage in a regulated real estate transaction, that buyer or seller remains a customer, and as such, the brokerage and its licensees are nonagents and owe the following legal duties and obligations: To disclose to the buyer/customer all adverse material facts actually known or which reasonably should have been known by the licensee.

- King failed to disclose adverse material facts to Buyers even though Sellers had previously disclosed the issues in disclosure forms and then updated the forms to the MLS.

22. This matter came before the Idaho Real Estate Commission at a regularly scheduled meeting and, pursuant to Idaho Code Section 54-2058(1), the Executive Director submitted a Probable Cause Memo alleging Respondent engaged in certain misconduct in violation of the Idaho Real Estate License Law and Rules. After reviewing the Probable Cause Memo, the Commission authorized its agent, Staff, to pursue formal action against Respondent.

STIPULATED DISCIPLINE

23. Respondent acknowledges and agrees that the following discipline imposed for the violations set forth in this Stipulation is reasonable under the circumstances, although not binding upon the Commission until it issues an Order accepting this Stipulation.

Formal Reprimand

- a. This Stipulation shall constitute a formal reprimand of Respondent for the actions set forth herein.

License Suspension

- b. Respondent's license, DB2840, is hereby suspended for a period of one (1) year; provided, however, that one hundred and eighty (180) days of the suspension shall be stayed pending Respondent's full compliance with all terms and conditions of this Stipulation. The suspension period shall commence upon the Commission's issuance of its Order accepting this Stipulation, and Respondent shall not practice real estate during the suspension period.

- c. In the event Respondent fails to timely comply with any term or condition of this Stipulation, the entire one (1)-year suspension shall be imposed, and the Commission may seek to impose additional discipline.

Fines and Fees:

- d. Respondent shall pay a \$3,000.00 civil fine within thirty (30) days of the service date of the Commission's Order.
- e. Respondent shall pay the costs and attorney fees in the amount of \$1,800.00 within thirty (30) days of the service date of the Commission's Order. All monies paid by Respondent shall be applied towards the costs and attorney fees award first before application to the civil fine.
- f. In the event Staff agrees to accept installment payments of any fine or fees under this Stipulation, should Respondent fail to timely make any one (1) payment as required by its due date, then all sums remaining unpaid shall immediately become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff's right, upon any subsequent failure by Respondent to make a timely payment, to invoke this provision to require immediate and full payment.
- g. All fines and attorney fees are due and payable pursuant to the terms of the Order issued by the Idaho Real Estate Commission. Payment(s) must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the date(s) set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

Continuing Education:

- h. Respondent shall successfully complete the following Idaho real estate educational course(s) within one hundred eighty (180) days after the service date of the Commission's Order:
- **Post License Fundamentals**
- i. **These course(s) shall be completed on or before 5:00 p.m. MST/MDT of the deadline day. In addition, within forty-eight (48) hours of completing said courses, Respondent shall be responsible for mailing, emailing, or faxing (208-334-2050) a copy of the completion**

certificate(s) to the Idaho Real Estate Commission, Attention: Chief Investigator. Should Respondent fail to provide Commission Staff with a completion certificate on or before the deadline, Respondent's real estate license shall be suspended pursuant to the terms of the Commission's Final Order.

- j. Respondent is on notice that pursuant to Idaho Code Section 54-2023(5): "No licensee shall obtain continuing education credit for education ordered by the commission as part of a disciplinary action." **Respondent shall not submit such commission-ordered educational courses for continuing education credit.**

ACKNOWLEDGEMENTS AND WAIVERS

In entering into this Stipulation, Respondent (or Respondent's legally authorized representative) acknowledges, understands, and admits the following:

24. This Stipulation is filed pursuant to the provisions of Idaho Code Sections 54-2058, 54-2059 and 54-2063, IDAPA 04.11.01.280.03, and complies with Chapter 52, Title 67, of the Idaho Code.

25. Respondent understands and admits the allegations pending before the Commission as set forth in this Stipulation and has had the opportunity to discuss them with legal counsel. Respondent understands that these allegations constitute cause for disciplinary action upon Respondent's license or ability to practice real estate in the State of Idaho.

26. Respondent voluntarily waives the right to a full and complete hearing regarding all matters set forth in this Stipulation, including the right to reconsideration of the Commission's orders; the right to judicial review of the Commission's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate in the State of Idaho.

27. Respondent agrees that the Commission may impose the disciplinary action set forth in this Stipulation without further process, evidence, or proof. Moreover, the Commission and Staff, without further notice or action otherwise required by the Idaho Code or IDAPA rules, is authorized to enforce all terms of this Stipulation, including, but not limited to, suspending Respondent's license or imposing the balance of any withheld discipline or civil penalty fine in the event Respondent fails to timely comply with any term or provision set forth herein.

28. Respondent agrees that this Stipulation may be presented to the Commission *ex parte* by Staff, and Respondent waives any and all rights to a hearing.

29. In the event the Commission in its discretion does not approve this Stipulation, this Stipulation shall be null and void and shall not be used for any purpose by any party. However, a formal Complaint may be filed against Respondent and a hearing may be held before the Commission to consider the allegations set forth in the Complaint. Under such circumstances, Respondent waives any potential right to challenge the Commission's authority or impartiality to preside over or hear the allegations based on its consideration and rejection of this Stipulation. Respondent does not waive any other rights regarding challenges to Commission members.

30. In the event Respondent fails to comply with any of the terms of this Stipulation, the Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Stipulation without further notice or a hearing.

31. Respondent understands and agrees that Respondent may not withdraw or seek to rescind this Stipulation prior to the time the Commission considers and acts upon it.

32. A faxed or scanned executed copy of this Stipulation shall be sufficient and the same as the original signed document.

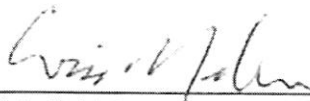
STIPULATION AND CONSENT ORDER - 11.

33. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

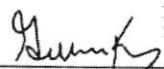
NAYLOR & HALES, P.C.

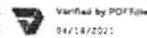
Date: 4/19/2021

By


Eric F. Nelson, Of the Firm
Attorneys for Staff of the Idaho Real
Estate Commission

Date: 04/18/2021


Gavin Joel King



ORDER

Pursuant to Idaho Code §§ 54-2058, 54-2059 and 54-2063, the foregoing is adopted as the decision of the Idaho Real Estate Commission in this matter and shall be effective on the 24th day of MAY, 2021. IT IS SO ORDERED.

IDAHO REAL ESTATE COMMISSION

By [Signature]
Commission Chair

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May, 2021, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Gavin King
1625 mustang Mesa Avenue
Middleton, ID 83644

☒ U.S. Mail
☐ Certified Mail, Return Receipt Requested
☐ Fax Transmission

Eric F. Nelson
Naylor & Hales, P.C.
950 W. Bannock St., Ste. 610
Boise, ID 83702

☐ U.S. Mail
☐ Hand Delivered
☒ Email: eric@naylorhales.com
☐ Fax Transmission: 208-383-9516

[Signature]
Kaylan Williams, Administrative Assistant
Staff of the Idaho Real Estate Commission

BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL
ESTATE COMMISSION,

Petitioner,

vs.

KURT HOLLENBERG and UNITED
COUNTRY COMMERCIAL AUCTION
SERVICES,

Respondent.

FINAL ORDER

On May 26, 2021, the Commission considered the parties' Stipulation wherein Respondent admitted to the following violation of the Real Estate License Law and Rules, Idaho Code:

A. § 54-2002, as defined by 54-2004(39)(a), (c) and (d) and 54-2004(2): For unlicensed practice by engaging in selling, listing, buying or negotiating, or offering to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest therein or business opportunity or interest therein for others, without an Idaho license.

- a. Hollenberg and United Country engaged in the unlicensed practice of real estate in Idaho.

Having considered the Stipulation, the Commission approves the same and enters the following order of discipline in accordance therewith.

IT IS HEREBY ORDERED, as follows:

1. **Cease and Desist**

A. Respondents shall cease and desist in engaging in any of the conduct of violations set forth in this Stipulation or any other conduct violating the Idaho Real Estate License Law and rules.

2. **Fines and Fees**

A. Respondent Hollenberg shall pay a **One Thousand Five Hundred Dollars (\$1,500.00) civil fine by June 25, 2021**. Respondents are jointly and severally liable for payment of this fine.

B. Respondent United Country shall pay a **One Thousand Five Hundred Dollars (\$1,500.00) civil fine by June 25, 2021**. Respondents are jointly and severally liable for payment of this fine.

C. Respondents shall pay **costs and attorney's fees in the amount of Six Hundred Dollars (\$600.00) by June 25, 2021**, and that in any event, all monies paid by Respondent be applied towards the costs/fees award first, before application to the fine. Respondents are jointly and severally liable for payment of these costs and fees.

D. In the event Staff agrees to accept installment payments of any fine or fees under the Stipulation, should Respondent fail to make any one payment as required by its due date, then all sums remaining unpaid shall at once become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff's right, upon any subsequent failure by Respondent to make a payment on time, to invoke this provision to require immediate and full payment.

E. All fines and attorney's fees are due and payable pursuant to the terms of this Order. Payments must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho

83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the dates set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

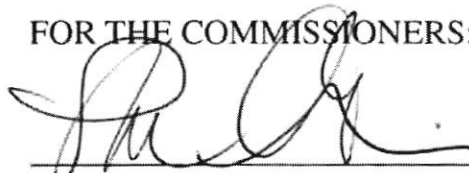
3. Respondent and Staff of the Idaho Real Estate Commission further agree that the Commission has authorized Staff, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately take action authorized by the Stipulation, including but not limited to, suspending Respondent's license, or imposing the balance of any withheld discipline or civil penalty fine, in the event of failure to timely comply with any term or condition of this Order entered pursuant to the Stipulation. Notice of such action sent to the most current address provided by Respondent to Staff shall be deemed sufficient. Any license suspended under this paragraph may be reinstated by Staff upon proof of compliance with the stipulation term or condition as ordered by the Commission.

4. The Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Final Order without further administrative hearing in the event the Respondent fails to comply with this Final Order entered pursuant to the Stipulation.

5. The Executive Director of the Idaho Real Estate Commission shall cause a true and correct copy of this Final Order to be served on the Respondent by mailing a copy to the Respondent's last known address on file at the Commission office.

Issued this 26 day of May 2021.

FOR THE COMMISSIONERS:


Mike Gamblin, Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of May 2021, I caused to be served, by the methods indicated, a true and correct copy of the Final Order upon:

Kurt Hollenberg
United Country Commercial
3600 I-70 Drive SE, Suite A
Columbia, MO 65201

X U.S. Mail
____ Email:
____ Facsimile Transmission

Eric F. Nelson
Naylor & Hales, PC
950 W. Bannock St. Ste 610
Boise, ID 83702

____ U.S. Mail
X Email:
eric@naylorhales.com
____ Facsimile Transmission

Kaylan Williams
Kaylan Williams, Administrative Assistant
Staff of the Idaho Real Estate Commission

BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL
ESTATE COMMISSION,

Petitioner,

vs.

LYNDSEE DANIELLE LEE,

Respondent.

FINAL ORDER

On May 26, 2021, the Commission considered the parties' Stipulation wherein Respondent admitted to the following violation of the Real Estate License Law and Rules, Idaho Code:

A. § 54-2012(1)(1): No Idaho sales associate may be licensed under or associated with more than one (1) Idaho broker at a time.

- a. Lee attempted to sell Pasto's property after she was no longer affiliated with the listing brokerage.

B. § 54-2013(1) and IDAPA 24.37.01.117 and 24.37.01.121: Each actively licensed licensee shall carry and maintain errors and omissions insurance to cover all licensed activities and will certify compliance with this insurance requirement to the Commission.

- a. Lee failed to maintain statutorily required errors and omissions insurance while her license was on active status.

C. § 54-2050(c): BROKERAGE REPRESENTATION AGREEMENTS – REQUIRED ELEMENTS. All real estate, must be in writing in the manner required by section 54-2085, Idaho Code, and must contain the following contract provisions:

(c) Price and terms:

- a. Lee failed to change the property's listing price in writing or obtain Pasto's signature authorizing the price reduction.

D. § 54-2050(e): BROKERAGE REPRESENTATION AGREEMENTS – REQUIRED ELEMENTS. All real estate brokerage representation agreements, whether with a buyer or seller, must be in writing in the manner required by section 54-2085, Idaho Code, and must contain the following contract provisions: (e) The signature of the owner of the real estate or the owner's legal, appointed and duly qualified representative and the date of such signature:

- a. Lee failed to change the property's listing price in writing or obtain Pasto's signature.

E. § 54-2053(4): No advertising shall provide any information to the public or to prospective customers or clients that is misleading in nature. Information is misleading if, when taken as a whole, there is a distinct probability that such information will deceive the person whom it is intended to influence.

- a. Lee falsely advertised a 7.5-acre property as being 14 acres and advertised herself as being affiliated with brokerage that she no longer worked for.

F. § 54-2058(3): AUTHORITY TO INVESTIGATE AND DISCIPLINE. The commission also has the authority to investigate the action of any Idaho licensee as provided in this section. The licensee or broker shall answer all reasonable investigative questions of the commission, and must make available, promptly upon

request, any and all record to the commission at the licensee's own cost and at the location or in the manner requested by the commission.

- a. Lee repeatedly failed to provide documents and information requested by Staff during its investigation.

G. § 54-2060(5) GROUNDS FOR DISCIPLINARY ACTION. A person found guilty of misconduct while performing or attempting to perform any act requiring an Idaho real estate broker or salesperson's license, regardless of whether the act was for the person's own account or in his capacity as broker or salesperson, shall be subject to disciplinary action by the commission. The following acts shall constitute misconduct within the meaning of this section: (5) Failure or refusal, upon lawful demand, to disclose any information within the person's knowledge, or to produce any documents, books or records in the person's possession for inspection by the commission or its authorized representative.

- a. Lee repeatedly failed to provide documents and information requested by Staff during its investigation.

Having considered the Stipulation, the Commission approves the same and enters the following order of discipline in accordance therewith.

IT IS HEREBY ORDERED, as follows:

1. **Formal Reprimand**

A. The Commission's Order shall constitute a formal reprimand of Respondent for the actions set forth in the Stipulation.

2. **Suspension of License:**

A. Respondent's license shall be suspended for a period of one (1)-year, however, the entirety of the suspension shall be withheld. If Respondent fails to

comply the terms of the Final Order or commits any other violation of the Idaho Real Estate License Law during withheld suspension, the entire suspension shall be imposed.

3. **Fines and Fees**

A. Respondent shall pay a **Three Thousand Three Hundred Dollars (\$3,300.00) civil fine by June 25, 2021.**

B. Respondent shall pay **costs and attorney's fees in the amount of Six Hundred Dollars (\$600.00) by June 25, 2021**, and that in any event, all monies paid by Respondent be applied towards the costs/fees award first, before application to the fine.

C. In the event Staff agrees to accept installment payments of any fine or fees under the Stipulation, should Respondent fail to make any one payment as required by its due date, then all sums remaining unpaid shall at once become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff's right, upon any subsequent failure by Respondent to make a payment on time, to invoke this provision to require immediate and full payment.

D. All fines and attorney's fees are due and payable pursuant to the terms of this Order. Payments must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the dates set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

4. **Continuing Education**

A. Respondent shall successfully complete the following Idaho real estate educational course by November 22, 2021:

- **Post License Professionalism, Negotiations, and Closings**

B. These course(s) shall be completed on or before 5:00 p.m. MST/MDT of the deadline day. In addition, within 48 hours of completing said course, Respondent shall be responsible for mailing/emailing/faxing (208-334-2050) a copy of the completion certificate to the Idaho Real Estate Commission, Attention: Chief Investigator. Should Respondent fail to provide Commission Staff with a completion certificate on or before the deadline, Respondent's real estate license shall be suspended pursuant to the terms of this Final Order.

C. Respondent is on notice that pursuant to Idaho Code 54-2023(5), "*No licensee shall obtain continuing education credit for education ordered by the Commission as part of a disciplinary action.*" Respondent shall not submit such Commission-ordered educational course for continuing education credit.

5. Respondent and Staff of the Idaho Real Estate Commission further agree that the Commission has authorized Staff, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately take action authorized by the Stipulation, including but not limited to, suspending Respondent's license, or imposing the balance of any withheld discipline or civil penalty fine, in the event of failure to timely comply with any term or condition of this Order entered pursuant to the Stipulation. Notice of such action sent to the most current address provided by Respondent to Staff shall be deemed sufficient. Any license suspended under this paragraph may be reinstated by Staff upon proof of compliance with the stipulation term or condition as ordered by the Commission.

6. The Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Final Order without further

administrative hearing in the event the Respondent fails to comply with this Final Order entered pursuant to the Stipulation.

7. The Executive Director of the Idaho Real Estate Commission shall cause a true and correct copy of this Final Order to be served on the Respondent by mailing a copy to the Respondent's last known address on file at the Commission office.

Issued this 26 day of May 2021.

FOR THE COMMISSIONERS:

A handwritten signature in black ink, appearing to read 'Mike Gamblin', written over a horizontal line.

Mike Gamblin, Chair

CERTIFICATE OF SERVICE

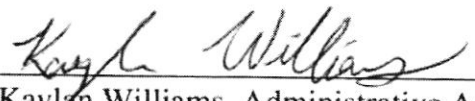
I HEREBY CERTIFY that on this 27th day of May 2021, I caused to be served, by the methods indicated, a true and correct copy of the Final Order upon:

Lyndsee Danielle Lee
481 E Mallard Ave
Coeur d'Alene, ID 83815

☒ U.S. Mail
☐ Email:
☐ Facsimile Transmission

Eric F. Nelson
Naylor & Hales, PC
950 W. Bannock St. Ste 610
Boise, ID 83702

☐ U.S. Mail
☒ Email:
eric@naylorhales.com
☐ Facsimile Transmission


Kaylan Williams, Administrative Assistant
Staff of the Idaho Real Estate Commission



IDAHO
REAL ESTATE COMMISSION
irec.idaho.gov

575 E. Parkcenter Blvd., Suite 180
Boise, Idaho 83706
Office: (208) 334-3285
Fax: (208) 334-2050
licensing@irec.idaho.gov

REE-142-04
Rev. 07/2020

IREC use only

License #: _____
Approved: _____

INDEPENDENT ERRORS & OMISSIONS INSURANCE CERTIFICATION OF COVERAGE FOR COMPANY

This form must be completed by an authorized agent or employee of the insurance carrier. Altered or partially handwritten forms will not be accepted.

COMPANY NAME: EXP REALTY, LLC
COMPANY LICENSE NUMBER: LC44316
INSURANCE AGENT: Di Weisinger PHONE: _____
ADDRESS: 1000 Wilshire Boulevard, 22nd Floor, Los Angeles, CA 90017
INSURANCE COMPANY: Starr Surplus Lines Insurance Company PHONE: _____
ADDRESS: 1000 Wilshire Boulevard, 22nd Floor, Los Angeles, CA 90017
POLICY NUMBER: 1000633760211
POLICY DATES: Effective: 10/26/2021 Expiration: 10/26/2022
PURCHASE DATE: 10/26/2021 PURCHASE TIME: _____
Coverage Limits: \$ 5,000,000 Per Occurrence: \$ 5,000,000 Aggregate

SPECIFY TYPE OF POLICY:

☐ **COMPANY ONLY (no individual licensees)**

☒ **BROKERAGE (FIRM)** This policy covers the company AND all licensees associated with the office.

I hereby certify that the above information is correct. The licensee named is covered for all activities licensed under Chapter 20, Title 54, Idaho Code, and the above-referenced policy meets the standards and coverage requirements of Idaho Code 54-2013 and IDAPA 24.37.01.118.

I specifically certify that the Insurance Company named above currently maintains an A.M. Best Company rating of B+ or better, and an A.M. Best Financial Size Category of Class VI or higher, as required by IDAPA 24.37.01.118.01.

It is understood and agreed that the Insurance Company will not terminate, cancel, lapse, fail or refuse to renew or modify the policy without first providing the Commission and the licensee with thirty (30) days written notice.

SIGNATURE: Grant Dethlefsen
Insurance Representative

Digitally signed by Grant Dethlefsen
Date: 2021.10.25 12:08:21 -07'00'

TITLE: Senior Broker - Aon

DATE: 10/25/2021

Falsification of this Certification by an insurance representative is punishable under Idaho Code 41-1321. A real estate licensee who knowingly submits a false Certification is subject to discipline, including but not limited to suspension or revocation of the license. IDAPA 24.37.01.122.

BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL
ESTATE COMMISSION,

Petitioner,

v.

MARCUS & MILLICHAP REAL ESTATE
INVESTMENT SERVICES OF CHICAGO,
INC.,

Respondent.

Case No. 20-0243

**STIPULATION AND
CONSENT ORDER**

The Staff of the Idaho Real Estate Commission ("Staff") has received information constituting sufficient grounds for the initiation of an administrative action against Respondent Marcus & Millichap Real Estate Investment Services of Chicago, Inc. ("M&M Chicago" or "Respondent"). The parties therefore stipulate and agree to settle this matter in lieu of administrative hearings before the Commission upon the following terms:

1. M&M Chicago is a licensed real estate brokerage in Illinois with offices located in Chicago. M&M Chicago is not a licensed Idaho brokerage but is subject to the jurisdiction and discipline of the Idaho Real Estate Commission by its actions as defined by Idaho Code Sections 54-2002 and 54-2058(1).

PARTIES

2. Marcus & Millichap Real Estate Investment Services, Inc. and its affiliated entities and subsidiaries (collectively, "M&M") is a commercial real estate brokerage and investment services company that operates numerous offices throughout the United States and Canada, including offices in Chicago, Illinois, where an M&M subsidiary is licensed as a real

STIPULATION AND CONSENT ORDER - 1.

estate brokerage under Marcus & Millichap Real Estate Investment Services of Chicago, Inc. ("M&M Chicago") and Boise, Idaho, where an M&M subsidiary is licensed as a real estate brokerage under Marcus & Millichap Real Estate Investment Services of Seattle, Inc. ("M&M Boise").

3. Paul H. Ryan is a licensed designated broker in Idaho and, at all times relevant to this Stipulation, was M&M's designated broker for M&M Boise.

4. Nicholas G. Kanich, at all times relevant to this stipulation, was a licensed real estate broker in Illinois affiliated with M&M Chicago. Kanich has never been licensed in Idaho.

ALLEGATIONS

5. M&M Chicago listed and marketed an Idaho commercial property for sale without an Idaho real estate license and without first obtaining an Idaho Cooperative License.

FACTUAL BACKGROUND

6. On July 13, 2020, M&M prepared an Exclusive Authorization to Sell or Exchange Representation Agreement, which indicated that M&M Boise intended to market and sell an Idaho commercial property listing for a Walgreens store located at 1570 E. Fairview Avenue in Meridian, Idaho. The terms of the agreement were from July 27, 2020 through January 27, 2021, and the property's list price was \$5,500,000.00. David Bradley, acting as Regional Manager for M&M Chicago, and Ryan, acting as designated broker for M&M Boise, signed the agreement on August 19, 2020 and August 20, 2020, respectively.

7. On August 10, 2020, Kanich emailed a potential buyer ("Buyer") located in Idaho about the Walgreens property. Kanich stated, in pertinent part, as follows:

I wanted to reach out as I noticed you recently transacted in the Idaho market in the past few years. We are bringing out a freestanding single tenant Walgreens Asset in the Boise

STIPULATION AND CONSENT ORDER - 2.

[metropolitan area] and I was curious if you might have any interest in taking a look at it before we go wide to the market with the property. I would be happy to discuss the finer details with you over the phone or I can shoot you over the full marketing package if you are interested in reviewing.

8. Also on August 10, 2020, Kanich emailed the property's Offering Memorandum ("OM") to Buyer and stated, "Let's connect if you have any questions or interest after reviewing." The OM's cover page prominently stated that the Walgreens property was "exclusively listed by" Kanich and also identified Ryan as the "Broker of Record." The OM also provided Kanich's contact information and his Illinois real estate license number.

9. On August 19, 2020, Ryan, acting in his capacity as an M&M broker, entered into an Interstate Brokerage Cooperation Agreement with Kanich relating to the Walgreens property. The agreement identified Ryan as "Broker of Record" ("BOR") and contained, in pertinent part, the following provisions:

- a. Ryan and Kanich would "work in cooperation pursuant to Marcus & Millichap's policies and procedures governing real estate brokerage activities in the State of Idaho . . . including, without limitation, rules governing brokerage by out-of-state licensees within the state."
- b. Ryan, as the BOR, "shall be responsible for supervising all licensed activities by [Kanich] within the state and shall review and approve all marketing materials, listing agreement or amendments thereto, and other documents requiring the signature or review of a real estate broker or agent" in Idaho.
- c. Ryan, as the BOR, would be "compensated by Marcus & Millichap pursuant to a separate agreement and in accordance with Marcus & Millichap's policies and procedures."

10. The agreement was signed by Ryan, Kanich, and Bradley (Regional Manager for M&M Chicago), among others.

STIPULATION AND CONSENT ORDER - 3.

11. M&M Chicago, Ryan, and Kanich did not obtain the required Idaho Cooperative License to market and sell the Walgreens property prior to engaging in the activities set forth above.

VIOLATIONS

12. Respondent's actions, as set forth in this Stipulation, violated Idaho Real Estate License Law, and Respondent hereby stipulates and agrees to cease such activities. Specifically, Respondent's conduct violated:

- a. Idaho Code Section 54-2002, as defined by Idaho Code Sections 54-2004(39)(a), (c), and (d) and 54-2004(2): Engaging in unlicensed practice by engaging in selling, listing, buying or negotiating, or offering to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest there in or business opportunity or interest therein for others, without an Idaho license.
 - M&M Chicago listed and marketed an Idaho property for sale without an Idaho license.

13. This matter came before the Idaho Real Estate Commission at a regularly scheduled meeting and, pursuant to Idaho Code Section 54-2058(1), the Executive Director submitted a Probable Cause Memo alleging M&M Chicago engaged in certain misconduct in violation of the Idaho Real Estate License Law and Rules. After reviewing the Probable Cause Memo, the Commission authorized Staff to pursue formal action against M&M Chicago.

STIPULATED DISCIPLINE

14. Respondent acknowledges and agrees that the following discipline imposed for the violations set forth in this Stipulation is reasonable under the circumstances, although not binding upon the Commission until it issues an Order accepting this Stipulation.

Cease and Desist:

- a. M&M Chicago shall cease and desist in engaging in any of the conduct or violations set forth in this Stipulation or any other conduct violating the Idaho Real Estate License Law and Rules.

Fines and Fees:

- b. M&M Chicago shall pay a One Thousand Five Hundred Dollar (\$1,500.00) civil fine within thirty (30) days of the service date of the Commission's Order.
- c. M&M Chicago shall pay the costs and attorney fees in the amount of Six Hundred Dollars (\$600.00) within thirty (30) days of the service date of the Commission's Order. All monies paid by M&M Chicago shall be applied towards the costs and attorney fees award first before application to the civil fine.
- d. In the event Staff agrees to accept installment payments of any fine or fees under this Stipulation, should M&M Chicago fail to timely make any one (1) payment as required by its due date, then all sums remaining unpaid shall immediately become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff's right, upon any subsequent failure by M&M Chicago to make a timely payment, to invoke this provision to require immediate and full payment.
- e. All fines and attorney fees are due and payable pursuant to the terms of the Order issued by the Idaho Real Estate Commission. Payment(s) must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the date(s) set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

ACKNOWLEDGEMENTS AND WAIVERS

In entering into this Stipulation, Respondent (or Respondent's legally authorized representative) acknowledges, understands, and admits the following:

15. This Stipulation is filed pursuant to the provisions of Idaho Code Sections 54-2058, 54-2059 and 54-2063, IDAPA 04.11.01.280.03, and complies with Chapter 52, Title 67, of the Idaho Code.

16. Respondent understands and admits the allegations pending before the Commission as set forth in this Stipulation. Respondent understands that these allegations constitute cause for disciplinary action upon Respondent's license or ability to practice real estate in the State of Idaho.

17. Respondent voluntarily waives the right to a full and complete hearing regarding all matters set forth in this Stipulation, including the right to reconsideration of the Commission's orders; the right to judicial review of the Commission's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate in the State of Idaho.

18. Respondent agrees that the Commission may impose the disciplinary action set forth in this Stipulation without further process, evidence, or proof. Moreover, the Commission and Staff, without further notice or action otherwise required by the Idaho Code or IDAPA rules, is authorized to enforce all terms of this Stipulation, including, but not limited to, suspending Respondent's license or imposing the balance of any withheld discipline or civil penalty fine in the event Respondent fails to timely comply with any term or provision set forth herein.

19. Respondent agrees that this Stipulation may be presented to the Commission *ex parte* by Staff, and Respondent waives any and all rights to a hearing.

STIPULATION AND CONSENT ORDER - 6.

20. In the event the Commission in its discretion does not approve this Stipulation, this Stipulation shall be null and void and shall not be used for any purpose by any party. However, a formal Complaint may be filed against Respondent and a hearing may be held before the Commission to consider the allegations set forth in the Complaint. Under such circumstances, Respondent waives any potential right to challenge the Commission's authority or impartiality to preside over or hear the allegations based on its consideration and rejection of this Stipulation. Respondent does not waive any other rights regarding challenges to Commission members.

21. In the event Respondent fails to comply with any of the terms of this Stipulation, the Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Stipulation without further notice or a hearing.

22. Respondent understands and agrees that Respondent may not withdraw or seek to rescind this Stipulation prior to the time the Commission considers and acts upon it.

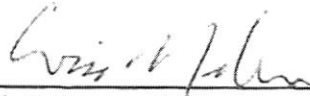
23. A faxed or scanned executed copy of this Stipulation shall be sufficient and the same as the original signed document.

24. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

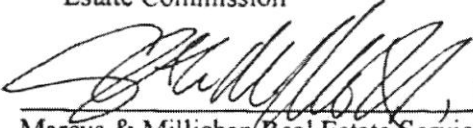
NAYLOR & HALES, P.C.

Date: 5/14/2021

By

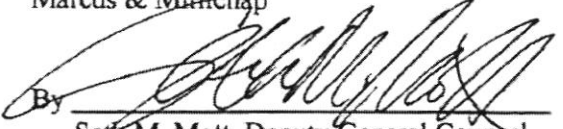

Eric F. Nelson, Of the Firm
Attorneys for Staff of the Idaho Real
Estate Commission

Date: May 14, 2021


FVP and DGC
Marcus & Millichap Real Estate Services of
Chicago, Inc.

APPROVED AS TO FORM BY:
Marcus & Millichap

By


Seth M. Mott, Deputy General Counsel
Attorneys for Respondent

STIPULATION AND CONSENT ORDER - 8.

ORDER

Pursuant to Idaho Code §§ 54-2058, 54-2059 and 54-2063, the foregoing is adopted as the decision of the Idaho Real Estate Commission in this matter and shall be effective on the 27th day of MAY, 2021. IT IS SO ORDERED.

IDAHO REAL ESTATE COMMISSION

By [Signature]
Commission Chair

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May, 2021, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Seth M. Mott
Marcus & Millichap
Deputy General Counsel
111 South Main Street, Ste. 500
Salt Lake City, UT 84111

☒ U.S. Mail
☐ Certified Mail, Return Receipt Requested
☐ Email: Seth.mott@marcusmillichap.com
☐ Fax Transmission

Eric F. Nelson
Naylor & Hales, P.C.
950 W. Bannock St., Ste. 610
Boise, ID 83702

☐ U.S. Mail
☐ Hand Delivered
☒ Email: eric@naylorhales.com
☐ Fax Transmission: 208-383-9516

[Signature]
Kaylan Williams, Administrative Assistant
Staff of the Idaho Real Estate Commission

STIPULATION AND CONSENT ORDER - 9.

BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL
ESTATE COMMISSION,

Petitioner,

v.

MARCUS & MILLICHAP REAL ESTATE
INVESTMENT SERVICES, INC.,

Respondent.

Case No. 19-0537

**STIPULATION AND
CONSENT ORDER**

The Staff of the Idaho Real Estate Commission ("Staff") has received information constituting sufficient grounds for the initiation of an administrative action against Respondent Marcus & Millichap Real Estate Investment Services, Inc.'s Phoenix office ("M&M Phoenix" or "Respondent"). The parties therefore stipulate and agree to settle this matter in lieu of administrative hearings before the Commission upon the following terms:

1. M&M Phoenix is licensed as real estate brokerage in Arizona with offices located in Phoenix. M&M Phoenix is not a licensed Idaho brokerage but is subject to the jurisdiction and discipline of the Idaho Real Estate Commission by its actions as defined by Idaho Code Sections 54-2002 and 54-2058(1).

PARTIES

2. Marcus & Millichap Real Estate Investment Services, Inc. and its affiliated entities and subsidiaries (collectively, "M&M") is a commercial real estate brokerage and investment services company that operates numerous offices throughout the United States and Canada, including offices in Phoenix, Arizona, where an M&M subsidiary is licensed as a real estate brokerage under M&M Phoenix, and Boise, Idaho, where an M&M subsidiary is licensed as a real

STIPULATION AND CONSENT ORDER - 1.

estate brokerage under Marcus & Millichap Real Estate Investment Services of Seattle, Inc. ("M&M Boise").

3. Paul H. Ryan is a licensed designated broker in Idaho and, at all times relevant to this Stipulation, was M&M's designated broker for M&M Boise.

4. Mark Ruble is a licensed real estate salesperson in Arizona affiliated with M&M Phoenix. Ruble has never been licensed to practice real estate in Idaho.

ALLEGATIONS

5. M&M Phoenix marketed and sold an Idaho commercial property without an Idaho real estate license and without first obtaining an Idaho Cooperative License.

FACTUAL BACKGROUND

6. On August 26, 2019, Ryan, acting in his capacity as an M&M broker, entered into an Interstate Brokerage Cooperation Agreement with M&M Phoenix relating to an Idaho commercial property listing for Freddy's Frozen Custard & Steakburgers ("Freddy's" or "Idaho property"), located at 5009 Cleveland Boulevard in Caldwell, Idaho. The agreement identified Ryan as "Broker of Record" ("BOR") and indicated that he would work with M&M Phoenix and Ruble to sell the Idaho property. The agreement commenced on August 26, 2019 and did not include an expiration date. The agreement stated that the "BOR will be compensated by Marcus & Millichap pursuant to separate agreement and in accordance with Marcus & Millichap's policies and procedures." Ryan and Ruble, among others, signed the agreement.

7. On August 30, 2019, Ryan, acting on behalf of M&M Boise, entered into a Representation Agreement with the owners ("Sellers") of the Idaho property. The agreement terms were from August 26, 2019 to January 31, 2020. The agreement included a list price \$1,826,000.00

STIPULATION AND CONSENT ORDER - 2.

and indicated that Sellers would pay a four (4)-percent commission upon closing. Ryan signed the agreement on August 30, 2019, in his capacity as BOR.

8. Throughout September and October of 2019, Ruble marketed the Idaho property on M&M Phoenix's website. The "Broker Information" section of the marketing materials identified Ruble as "agent" and included his individual contact information. Neither Ryan nor M&M Boise were identified in the marketing materials. The marketing materials on M&M Phoenix's website included a link to a downloadable marketing package for the Idaho property. This marketing package included Ryan's name as the Broker of Record and indicated he was affiliated with M&M Boise.

9. Ruble also marketed the Idaho property on LoopNet, an online commercial real estate marketplace. The marketing materials included Ruble's name and contact information, but did not identify either Ryan or M&M Boise.

10. In or around early November 2019, Sydney Burtwell ("Buyer's agent"), an Idaho real estate salesperson acting on behalf of her buyer client, began negotiating with Ruble regarding the terms of a potential purchase of the Idaho property. During the entirety of that process and the ultimate closing of the transaction, Buyer's agent communicated exclusively with Ruble and never had any contact with Ryan.

11. For example, from November 4, 2019 through November 8, 2019, Buyer's agent and Ruble exchanged numerous emails while negotiating the terms of a potential transaction and never included or copied Ryan in the correspondence.

12. On November 7, 2019, Buyer's agent prepared a \$1,800,000.00 purchase and sale agreement for the Idaho property. The agreement identified "Marcus & Millichap" as the listing

STIPULATION AND CONSENT ORDER - 3.

agency but did not identify a specific M&M franchise office. Additionally, pursuant to Ruble's request, it did not identify a listing agent.

13. Later that same day on November 7, 2019, Sellers accepted Buyer's offer.

14. On November 8, 2019, Buyer's transaction coordinator emailed Ruble and stated that the purchase and sale agreement needed to be amended to identify an Idaho-licensed listing agent. Shortly thereafter, the parties executed an addendum and identified Ryan as the listing agent.

15. On December 16, 2019, the Idaho property transaction closed. Closing documents listed M&M Phoenix as one (1) of the brokers in the transaction and stated that it received a \$25,738.00 commission. Neither Ryan nor M&M Boise were identified in the closing settlement statement, and they did not receive any commission at closing.

16. After closing, M&M Phoenix applied for an Idaho Cooperative License to sell the Idaho property, even though it had already been sold. Staff, however, rejected the application because it did not identify an Arizona designated broker. Rather, the application listed Ruble as the designated broker of M&M Phoenix when, in fact, he was not the broker of the franchise office.

17. M&M Phoenix, Ruble, and Ryan never obtained the required Cooperative License to market and sell the Idaho property.

VIOLATIONS

18. Respondent's actions, as set forth in this Stipulation, violated Idaho Real Estate License Law, and Respondent hereby stipulates and agrees to cease such activities. Specifically, Respondent's conduct violated:

- a. Idaho Code Section 54-2002, as defined by Idaho Code Sections 54-2004(39)(a), (c), and (d) and 54-2004(2): Engaging in unlicensed practice by engaging in selling, listing, buying or negotiating, or offering to sell, list,

STIPULATION AND CONSENT ORDER - 4.

buy or negotiate the purchase, sale, option or exchange of real estate or any interest there in or business opportunity or interest therein for others, without an Idaho license.

- M&M Phoenix listed, marketed and sold an Idaho property for sale without an Idaho license.

19. This matter came before the Idaho Real Estate Commission at a regularly scheduled meeting and, pursuant to Idaho Code Section 54-2058(1), the Executive Director submitted a Probable Cause Memo alleging M&M Phoenix engaged in certain misconduct in violation of the Idaho Real Estate License Law and Rules. After reviewing the Probable Cause Memo, the Commission authorized Staff to pursue formal action against M&M Phoenix.

STIPULATED DISCIPLINE

20. Respondent acknowledges and agrees that the following discipline imposed for the violations set forth herein is reasonable under the circumstances, although not binding upon the Commission until it issues an Order accepting this Stipulation.

Cease and Desist:

- a. M&M Phoenix shall cease and desist in engaging in any of the conduct or violations set forth in this Stipulation or any other conduct violating the Idaho Real Estate License Law and Rules.

Fines and Fees:

- b. M&M Phoenix shall pay a One Thousand Five Hundred Dollar (\$1,500.00) civil fine within thirty (30) days of the service date of the Commission's Order.
- c. M&M Phoenix shall pay the costs and attorney fees in the amount of Six Hundred Dollars (\$600.00) within thirty (30) days of the service date of the Commission's Order. All monies paid by M&M Phoenix shall be applied towards the costs and attorney fees award first before application to the civil fine.
- d. In the event Staff agrees to accept installment payments of any fine or fees under this Stipulation, should M&M Phoenix fail to timely make any one

STIPULATION AND CONSENT ORDER - 5.

(1) payment as required by its due date, then all sums remaining unpaid shall immediately become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff's right, upon any subsequent failure by M&M Phoenix to make a timely payment, to invoke this provision to require immediate and full payment.

- e. All fines and attorney fees are due and payable pursuant to the terms of the Order issued by the Idaho Real Estate Commission. Payment(s) must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the date(s) set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

ACKNOWLEDGEMENTS AND WAIVERS

In entering into this Stipulation, Respondent (or its legally authorized representative) acknowledges, understands, and admits the following:

21. This Stipulation is filed pursuant to the provisions of Idaho Code Sections 54-2058, 54-2059 and 54-2063, IDAPA 04.11.01.280.03, and complies with Chapter 52, Title 67, of the Idaho Code.

22. Respondent understands and admits the allegations pending before the Commission as set forth in this Stipulation. Respondent understands that these allegations constitute cause for disciplinary action upon Respondent's license or ability to practice real estate in the State of Idaho.

23. Respondent voluntarily waives the right to a full and complete hearing regarding all matters set forth in this Stipulation, including the right to reconsideration of the Commission's orders; the right to judicial review of the Commission's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate in the State of Idaho.

STIPULATION AND CONSENT ORDER - 6.

24. Respondent agrees that the Commission may impose the disciplinary action set forth in this Stipulation without further process, evidence, or proof. Moreover, the Commission and Staff, without further notice or action otherwise required by the Idaho Code or IDAPA rules, is authorized to enforce all terms of this Stipulation, including, but not limited to, suspending Respondent's license or imposing the balance of any withheld discipline or civil penalty fine in the event Respondent fails to timely comply with any term or provision set forth herein.

25. Respondent agrees that this Stipulation may be presented to the Commission *ex parte* by Staff, and Respondent waives any and all rights to a hearing.

26. In the event the Commission in its discretion does not approve this Stipulation, this Stipulation shall be null and void and shall not be used for any purpose by any party. However, a formal Complaint may be filed against Respondent and a hearing may be held before the Commission to consider the allegations set forth in the Complaint. Under such circumstances, Respondent waives any potential right to challenge the Commission's authority or impartiality to preside over or hear the allegations based on its consideration and rejection of this Stipulation. Respondent does not waive any other rights regarding challenges to Commission members.

27. In the event Respondent fails to comply with any of the terms of this Stipulation, the Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Stipulation without further notice or a hearing.

28. Respondent understands and agrees that Respondent may not withdraw or seek to rescind this Stipulation prior to the time the Commission considers and acts upon it.

29. A faxed or scanned executed copy of this Stipulation shall be sufficient and the same as the original signed document.

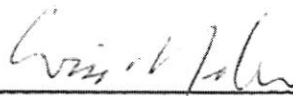
STIPULATION AND CONSENT ORDER - 7.

30. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

NAYLOR & HALES, P.C.

Date: 5/14/2021


By


Eric F. Nelson, Of the Firm
Attorneys for Staff of the Idaho Real
Estate Commission

Date: May 14, 2021


FVP and DGC
Marcus & Millichap Real Estate Services ~~of~~
~~Phoenix, Inc.~~
~~Shen~~

APPROVED AS TO FORM BY:
Marcus & Millichap

By 
Seth Mott, Deputy General Counsel
Attorneys for Respondent

ORDER

Pursuant to Idaho Code §§ 54-2058, 54-2059 and 54-2063, the foregoing is adopted as the decision of the Idaho Real Estate Commission in this matter and shall be effective on the 26th day of MAY, 2021. IT IS SO ORDERED.

IDAHO REAL ESTATE COMMISSION

By 
Commission Chair

CERTIFICATE OF SERVICE

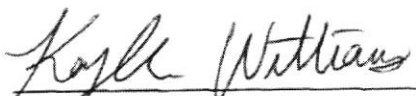
I hereby certify that on the 27th day of May, 2021, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Seth Mott
Deputy General Counsel
111 South Main Street, Ste. 500
Salt Lake City, UT 84111

☒ U.S. Mail
☐ Certified Mail, Return Receipt Requested
☐ Email: Seth.mott@marcusmillichap.com
☐ Fax Transmission

Eric F. Nelson
Naylor & Hales, P.C.
950 W. Bannock St., Ste. 610
Boise, ID 83702

☐ U.S. Mail
☐ Hand Delivered
☒ Email: eric@naylorhales.com
☐ Fax Transmission: 208-383-9516


Kaylan Williams, Administrative Assistant
Staff of the Idaho Real Estate Commission

BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL
ESTATE COMMISSION,

Petitioner,

v.

MARK RUBLE,

Respondent.

Case No. 19-0534

**STIPULATION AND
CONSENT ORDER**

The Staff of the Idaho Real Estate Commission ("Staff") has received information constituting sufficient grounds for the initiation of an administrative action against Respondent Mark Ruble. The parties therefore stipulate and agree to settle this matter in lieu of administrative hearings before the Commission upon the following terms:

1. Ruble is a licensed real estate salesperson in Arizona and is affiliated with Marcus & Millichap Real Estate Investment Services, Inc. in its Phoenix office ("M&M Phoenix"). Ruble is not licensed to practice real estate in Idaho but is subject to the jurisdiction and discipline of the Idaho Real Estate Commission by his actions as defined by Idaho Code Sections 54-2002 and 54-2058(1).

PARTIES

2. Marcus & Millichap Real Estate Investment Services, Inc. and its affiliated entities and subsidiaries (collectively, "M&M") is a commercial real estate brokerage and investment services company that operates numerous offices throughout the United States and Canada, including offices in Phoenix, Arizona, where an M&M subsidiary is licensed as a real estate brokerage under M&M Phoenix, and Boise, Idaho, where an M&M subsidiary is licensed as a real

STIPULATION AND CONSENT ORDER - 1.

estate brokerage under Marcus & Millichap Real Estate Investment Services of Seattle, Inc. ("M&M Boise").

3. M&M Phoenix is a licensed real estate brokerage in Arizona but is not licensed in Idaho.

4. Paul H. Ryan is a licensed designated broker in Idaho and, at all times relevant to this Stipulation, was the designated broker of M&M Boise.

ALLEGATIONS

5. Ruble marketed and sold an Idaho commercial property without a license.

FACTUAL BACKGROUND

6. On August 26, 2019, Ryan, acting in his capacity as an M&M broker, entered into an Interstate Brokerage Cooperation Agreement with M&M Phoenix relating to an Idaho commercial property listing for Freddy's Frozen Custard & Steakburgers ("Freddy's" or "Idaho property"), located at 5009 Cleveland Boulevard in Caldwell, Idaho. The agreement identified Ryan as "Broker of Record" ("BOR") and indicated that he would work with M&M Phoenix and Ruble to sell the Idaho property. The agreement commenced on August 26, 2019 and did not include an expiration date. The agreement stated that the "BOR will be compensated by Marcus & Millichap pursuant to separate agreement and in accordance with Marcus & Millichap's policies and procedures." Ryan and Ruble, among others, signed the agreement.

7. On August 30, 2019, Ryan, acting on behalf of M&M Boise, entered into a Representation Agreement with the owners ("Sellers") of the Idaho property. The agreement terms were from August 26, 2019 to January 31, 2020. The agreement included a list price \$1,826,000.00 and indicated that Sellers would pay a four (4)-percent commission upon closing. Ryan signed the agreement on August 30, 2019, in his capacity as BOR.

STIPULATION AND CONSENT ORDER - 2.

8. Throughout September and October of 2019, Ruble marketed the Idaho property on M&M Phoenix's website. The "Broker Information" section of the marketing materials identified Ruble as "agent" and included his individual contact information. Neither Ryan nor M&M Boise were identified in the marketing materials. The marketing materials on M&M Phoenix's website included a link to a downloadable marketing package for the Idaho property. This marketing package included Ryan's name as the Broker of Record and indicated he was affiliated with M&M Boise.

9. Ruble also marketed the Idaho property on LoopNet, an online commercial real estate marketplace. The marketing materials included Ruble's name and contact information, but did not identify either Ryan or M&M Boise.

10. In or around early November 2019, Sydney Burtwell ("Buyer's agent"), an Idaho real estate salesperson acting on behalf of her buyer client, began negotiating with Ruble regarding the terms of a potential purchase of the Idaho property. During the entirety of that process and the ultimate closing of the transaction, Buyer's agent communicated exclusively with Ruble and never had any contact with Ryan.

11. For example, from November 4, 2019 through November 8, 2019, Buyer's agent and Ruble exchanged numerous emails while negotiating the terms of a potential transaction and never included or copied Ryan in the correspondence.

12. On November 7, 2019, Buyer's agent prepared a \$1,800,000.00 purchase and sale agreement for the Idaho property. The agreement identified "Marcus & Millichap" as the listing agency but did not identify a specific M&M franchise office. Additionally, pursuant to Ruble's request, it did not identify a listing agent.

13. Later that same day on November 7, 2019, Sellers accepted Buyer's offer.

STIPULATION AND CONSENT ORDER - 3.

14. On November 8, 2019, Buyer's transaction coordinator emailed Ruble and stated that the purchase and sale agreement needed to be amended to identify an Idaho-licensed listing agent. Shortly thereafter, the parties executed an addendum and identified Ryan as the listing agent.

15. On December 16, 2019, the Idaho property transaction closed. Closing documents listed M&M Phoenix as one (1) of the brokers in the transaction and stated that it received a \$25,738.00 commission. Neither Ryan nor M&M Boise were identified in the closing settlement statement, and they did not receive any commission at closing.

16. After closing, M&M Phoenix applied for an Idaho Cooperative License to sell the Idaho property, even though it had already been sold. Staff, however, rejected the application because it did not identify an Arizona designated broker. Rather, the application listed Ruble as the designated broker of M&M Phoenix when, in fact, he was not the broker of the franchise office.

17. Ruble, M&M Phoenix, and Ryan never obtained the required Cooperative License to market and sell the Idaho property.

VIOLATIONS

18. Ruble's actions, as set forth in this Stipulation, violated Idaho Real Estate License Law, and he hereby stipulates and agrees to cease such activities. Specifically, Ruble's conduct violated:

- a. Idaho Code Section 54-2002, as defined by Idaho Code Sections 54-2004(39)(a), (c), and (d) and 54-2004(2): Engaging in unlicensed practice by engaging in selling, listing, buying or negotiating, or offering to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest there in or business opportunity or interest therein for others, without an Idaho license.
 - Ruble listed, marketed and sold an Idaho property for sale without an Idaho license.

STIPULATION AND CONSENT ORDER - 4.

19. This matter came before the Idaho Real Estate Commission at a regularly scheduled meeting and, pursuant to Idaho Code Section 54-2058(1), the Executive Director submitted a Probable Cause Memo alleging Ruble engaged in certain misconduct in violation of the Idaho Real Estate License Law and Rules. After reviewing the Probable Cause Memo, the Commission authorized Staff to pursue formal action against Ruble.

STIPULATED DISCIPLINE

20. Ruble acknowledges and agrees that the following discipline imposed for the violations set forth herein is reasonable under the circumstances, although not binding upon the Commission until it issues an Order accepting this Stipulation.

Cease and Desist:

- a. Ruble shall cease and desist in engaging in any of the conduct or violations set forth in this Stipulation or any other conduct violating the Idaho Real Estate License Law and Rules.

Fines and Fees:

- b. Ruble shall pay a One Thousand Five Hundred Dollar (\$1,500.00) civil fine within thirty (30) days of the service date of the Commission's Order.
- c. Ruble shall pay the costs and attorney fees in the amount of Six Dollars (\$600.00) within thirty (30) days of the service date of the Commission's Order. All monies paid by Ruble shall be applied towards the costs and attorney fees award first before application to the civil fine.
- d. In the event Staff agrees to accept installment payments of any fine or fees under this Stipulation, should Ruble fail to timely make any one (1) payment as required by its due date, then all sums remaining unpaid shall immediately become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff's right, upon any subsequent failure by Ruble to make a timely payment, to invoke this provision to require immediate and full payment.

- e. All fines and attorney fees are due and payable pursuant to the terms of the Order issued by the Idaho Real Estate Commission. Payment(s) must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the date(s) set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

ACKNOWLEDGEMENTS AND WAIVERS

In entering into this Stipulation, Ruble (or Ruble's legally authorized representative) acknowledges, understands, and admits the following:

21. This Stipulation is filed pursuant to the provisions of Idaho Code Sections 54-2058, 54-2059 and 54-2063, IDAPA 04.11.01.280.03, and complies with Chapter 52, Title 67, of the Idaho Code.

22. Ruble understands and admits the allegations pending before the Commission as set forth in this Stipulation. Ruble understands that these allegations constitute cause for disciplinary action upon Ruble's license or ability to practice real estate in the State of Idaho.

23. Ruble voluntarily waives the right to a full and complete hearing regarding all matters set forth in this Stipulation, including the right to reconsideration of the Commission's orders; the right to judicial review of the Commission's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate in the State of Idaho.

24. Ruble agrees that the Commission may impose the disciplinary action set forth in this Stipulation without further process, evidence, or proof. Moreover, the Commission and Staff,

without further notice or action otherwise required by the Idaho Code or IDAPA rules, is authorized to enforce all terms of this Stipulation.

25. Ruble agrees that this Stipulation may be presented to the Commission *ex parte* by Staff, and Ruble waives any and all rights to a hearing.

26. In the event the Commission in its discretion does not approve this Stipulation, this Stipulation shall be null and void and shall not be used for any purpose by any party. However, a formal Complaint may be filed against Ruble and a hearing may be held before the Commission to consider the allegations set forth in the Complaint. Under such circumstances, Ruble waives any potential right to challenge the Commission's authority or impartiality to preside over or hear the allegations based on its consideration and rejection of this Stipulation. Ruble does not waive any other rights regarding challenges to Commission members.

27. In the event Ruble fails to comply with any of the terms of this Stipulation, the Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Stipulation without further notice or a hearing.

28. Ruble understands and agrees that he may not withdraw or seek to rescind this Stipulation prior to the time the Commission considers and acts upon it.

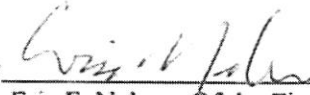
29. A faxed or scanned executed copy of this Stipulation shall be sufficient and the same as the original signed document.

30. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

NAYLOR & HALES, P.C.

Date: 5/14/2021

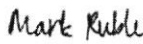
By



Eric F. Nelson, Of the Firm
Attorneys for Staff of the Idaho Real
Estate Commission

Date: 5/14/2021 | 09:29:34 PDT

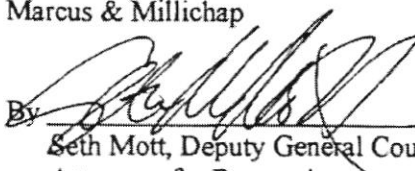
DocuSigned by:



Mark Ruble

APPROVED AS TO FORM BY:
Marcus & Millichap

By

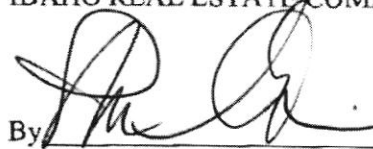


Seth Mott, Deputy General Counsel
Attorneys for Respondent

ORDER

Pursuant to Idaho Code §§ 54-2058, 54-2059 and 54-2063, the foregoing is adopted as the decision of the Idaho Real Estate Commission in this matter and shall be effective on the 24 day of MAY, 2021. IT IS SO ORDERED.

IDAHO REAL ESTATE COMMISSION



By

Commission Chair

STIPULATION AND CONSENT ORDER - 8.

CERTIFICATE OF SERVICE

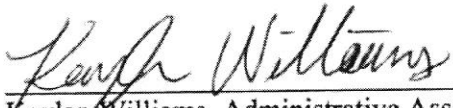
I hereby certify that on the 27th day of May, 2021,
I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Seth Mott
Deputy General Counsel
111 South Main Street, Ste. 500
Salt Lake City, UT 84111

☒ U.S. Mail
☐ Certified Mail, Return Receipt Requested
☐ Email: Seth.mott@marcusmillichap.com
☐ Fax Transmission

Eric F. Nelson
Naylor & Hales, P.C.
950 W. Bannock St., Ste. 610
Boise, ID 83702

☐ U.S. Mail
☐ Hand Delivered
☒ Email: eric@naylorhales.com
☐ Fax Transmission: 208-383-9516



Kaylan Williams, Administrative Assistant
Staff of the Idaho Real Estate Commission

BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL
ESTATE COMMISSION,

Petitioner,

v.

NICHOLAS G. KANICH,

Respondent.

Case No. 20-0242

**STIPULATION AND
CONSENT ORDER**

The Staff of the Idaho Real Estate Commission ("Staff") has received information constituting sufficient grounds for the initiation of an administrative action against Respondent Nicholas G. Kanich. The parties therefore stipulate and agree to settle this matter in lieu of administrative hearings before the Commission upon the following terms:

1. Kanich is a licensed real estate broker in Illinois and, at all times relevant to this stipulation, was affiliated with Marcus & Millichap Real Estate Investment Services of Chicago, Inc. He is not licensed to practice real estate in Idaho but is subject to the jurisdiction and discipline of the Idaho Real Estate Commission by his actions as defined by Idaho Code Sections 54-2002 and 54-2058(1).

PARTIES

2. Marcus & Millichap Real Estate Investment Services, Inc. and its affiliated entities and subsidiaries (collectively, "M&M") is a commercial real estate brokerage and investment services company that operates numerous offices throughout the United States and Canada, including offices in Chicago, Illinois, where an M&M subsidiary is licensed as a real estate brokerage under Marcus & Millichap Real Estate Investment Services of Chicago, Inc. ("M&M

STIPULATION AND CONSENT ORDER - 1.

Chicago”) and Boise, Idaho, where an M&M subsidiary is licensed as a real estate brokerage under Marcus & Millichap Real Estate Investment Services of Seattle, Inc. (“M&M Boise”).

3. M&M Chicago is a licensed real estate brokerage in Illinois but is not licensed in Idaho.

4. Paul H. Ryan is a licensed designated broker in Idaho and, at all times relevant to this Stipulation, was the designated broker of M&M Boise.

ALLEGATIONS

5. Kanich listed and marketed an Idaho commercial property for sale without an Idaho real estate license and without first obtaining an Idaho Cooperative License.

FACTUAL BACKGROUND

6. On July 13, 2020, M&M prepared an Exclusive Authorization to Sell or Exchange Representation Agreement, which indicated that M&M Boise intended to market and sell an Idaho commercial property listing for a Walgreens store located at 1570 E. Fairview Avenue in Meridian, Idaho. The terms of the agreement were from July 27, 2020 through January 27, 2021, and the property’s list price was \$5,500,000.00. David Bradley, acting as Regional Manager for M&M Chicago, and Ryan, acting as designated broker for M&M Boise, signed the agreement on August 19, 2020 and August 20, 2020, respectively.

7. On August 10, 2020, Kanich emailed a potential buyer (“Buyer”) located in Idaho about the Walgreens property. Kanich stated, in pertinent part, as follows:

I wanted to reach out as I noticed you recently transacted in the Idaho market in the past few years. We are bringing out a freestanding single tenant Walgreens Asset in the Boise [metropolitan area] and I was curious if you might have any interest in taking a look at it before we go wide to the market with the property. I would be happy to discuss the finer details with you over

the phone or I can shoot you over the full marketing package if you are interested in reviewing.

8. Also on August 10, 2020, Kanich emailed the property's Offering Memorandum ("OM") to Buyer and stated, "Let's connect if you have any questions or interest after reviewing." The OM's cover page prominently stated that the Walgreens property was "exclusively listed by" Kanich and also identified Ryan as the "Broker of Record." The OM also provided Kanich's contact information and his Illinois real estate license number.

9. On August 19, 2020, Ryan, acting in his capacity as an M&M broker, entered into an Interstate Brokerage Cooperation Agreement with Kanich relating to the Walgreens property. The agreement identified Ryan as "Broker of Record" ("BOR") and contained, in pertinent part, the following provisions:

- a. Ryan and Kanich would "work in cooperation pursuant to Marcus & Millichap's policies and procedures governing real estate brokerage activities in the State of Idaho . . . including, without limitation, rules governing brokerage by out-of-state licensees within the state."
- b. Ryan, as the BOR, "shall be responsible for supervising all licensed activities by [Kanich] within the state and shall review and approve all marketing materials, listing agreement or amendments thereto, and other documents requiring the signature or review of a real estate broker or agent" in Idaho.
- c. Ryan, as the BOR, would be "compensated by Marcus & Millichap pursuant to a separate agreement and in accordance with Marcus & Millichap's policies and procedures."

10. The agreement was signed by Kanich, Ryan, and Bradley (Regional Manager for M&M Chicago), among others.

11. Kanich, M&M Chicago and Ryan did not obtain the required Idaho Cooperative License to market and sell the Walgreens property prior to engaging in the activities set forth above.

STIPULATION AND CONSENT ORDER - 3.

VIOLATIONS

12. Kanich's actions, as set forth in this Stipulation, violated Idaho Real Estate License Law, and Kanich hereby stipulates and agrees to cease such activities. Specifically, Kanich's conduct violated:

- a. Idaho Code Section 54-2002, as defined by Idaho Code Sections 54-2004(39)(a), (c), and (d) and 54-2004(2): Engaging in unlicensed practice by engaging in selling, listing, buying or negotiating, or offering to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest therein or business opportunity or interest therein for others, without an Idaho license.
 - Kanich listed and marketed an Idaho property for sale without an Idaho license.

13. This matter came before the Idaho Real Estate Commission at a regularly scheduled meeting and, pursuant to Idaho Code Section 54-2058(1), the Executive Director submitted a Probable Cause Memo alleging Kanich engaged in certain misconduct in violation of the Idaho Real Estate License Law and Rules. After reviewing the Probable Cause Memo, the Commission authorized Staff to pursue formal action against Kanich.

STIPULATED DISCIPLINE

14. Respondent acknowledges and agrees that the following discipline imposed for the violations set forth in this Stipulation is reasonable under the circumstances, although not binding upon the Commission until it issues an Order accepting this Stipulation.

Cease and Desist:

- a. Kanich shall cease and desist from engaging in any of the conduct or violations set forth in this Stipulation or any other conduct violating the Idaho Real Estate License Law and Rules.

Fines and Fees:

- b. Kanich shall pay a One Thousand Five Hundred Dollar (\$1,500.00) civil fine within thirty (30) days of the service date of the Commission's Order.
- c. Kanich shall pay the costs and attorney fees in the amount of Six Hundred Dollars (\$600.00) within thirty (30) days of the service date of the Commission's Order. All monies paid by Kanich shall be applied towards the costs and attorney fees award first before application to the civil fine.
- d. In the event Staff agrees to accept installment payments of any fine or fees under this Stipulation, should Kanich fail to timely make any one (1) payment as required by its due date, then all sums remaining unpaid shall immediately become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff's right, upon any subsequent failure by Kanich to make a timely payment, to invoke this provision to require immediate and full payment.
- e. All fines and attorney fees are due and payable pursuant to the terms of the Order issued by the Idaho Real Estate Commission. Payment(s) must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the date(s) set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

ACKNOWLEDGEMENTS AND WAIVERS

In entering into this Stipulation, Respondent (or Respondent's legally authorized representative) acknowledges, understands, and admits the following:

- 15. This Stipulation is filed pursuant to the provisions of Idaho Code Sections 54-2058, 54-2059 and 54-2063, IDAPA 04.11.01.280.03, and complies with Chapter 52, Title 67, of the Idaho Code.

16. Respondent understands and admits the allegations pending before the Commission as set forth in this Stipulation. Respondent understands that these allegations constitute cause for disciplinary action upon Respondent's license or ability to practice real estate in the State of Idaho.

17. Respondent voluntarily waives the right to a full and complete hearing regarding all matters set forth in this Stipulation, including the right to reconsideration of the Commission's orders; the right to judicial review of the Commission's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate in the State of Idaho.

18. Respondent agrees that the Commission may impose the disciplinary action set forth in this Stipulation without further process, evidence, or proof. Moreover, the Commission and Staff, without further notice or action otherwise required by the Idaho Code or IDAPA rules, is authorized to enforce all terms of this Stipulation, including, but not limited to, suspending Respondent's license or imposing the balance of any withheld discipline or civil penalty fine in the event Respondent fails to timely comply with any term or provision set forth herein.

19. Respondent agrees that this Stipulation may be presented to the Commission *ex parte* by Staff, and Respondent waives any and all rights to a hearing.

20. In the event the Commission in its discretion does not approve this Stipulation, this Stipulation shall be null and void and shall not be used for any purpose by any party. However, a formal Complaint may be filed against Respondent and a hearing may be held before the Commission to consider the allegations set forth in the Complaint. Under such circumstances, Respondent waives any potential right to challenge the Commission's authority or impartiality to preside over or hear the allegations based on its consideration and rejection of this Stipulation. Respondent does not waive any other rights regarding challenges to Commission members.

STIPULATION AND CONSENT ORDER - 6.

21. In the event Respondent fails to comply with any of the terms of this Stipulation, the Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Stipulation without further notice or a hearing.

22. Respondent understands and agrees that Respondent may not withdraw or seek to rescind this Stipulation prior to the time the Commission considers and acts upon it.


23. A faxed or scanned executed copy of this Stipulation shall be sufficient and the same as the original signed document.

24. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

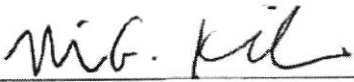
NAYLOR & HALES, P.C.

Date: 5/14/2021

By

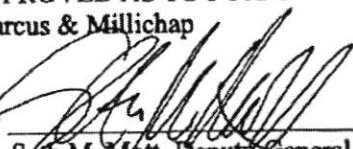

Eric F. Nelson, Of the Firm
Attorneys for Staff of the Idaho Real
Estate Commission

Date: 05/13/2021


Nicholas G. Kanich

APPROVED AS TO FORM BY:
Marcus & Millichap

By

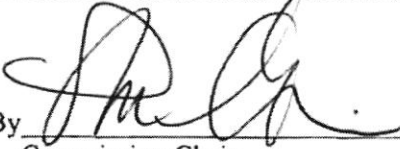

Seth M. Mott, Deputy General Counsel
Attorney for Respondent

STIPULATION AND CONSENT ORDER - 7.

ORDER

Pursuant to Idaho Code §§ 54-2058, 54-2059 and 54-2063, the foregoing is adopted as the decision of the Idaho Real Estate Commission in this matter and shall be effective on the 26 day of MAY, 2021. IT IS SO ORDERED.

IDAHO REAL ESTATE COMMISSION

By 
Commission Chair

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May, 2021, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Seth M. Mott
Marcus & Millichap
Deputy General Counsel
111 South Main Street, Ste. 500
Salt Lake City, UT 84111

☒ U.S. Mail
☐ Certified Mail, Return Receipt Requested
☐ Email: Seth.mott@marcusmillichap.com
☐ Fax Transmission

Eric F. Nelson
Naylor & Hales, P.C.
950 W. Bannock St., Ste. 610
Boise, ID 83702

☐ U.S. Mail
☐ Hand Delivered
☒ Email: eric@naylorhales.com
☐ Fax Transmission: 208-383-9516


Kaylan Williams, Administrative Assistant
Staff of the Idaho Real Estate Commission

BEFORE THE IDAHO REAL ESTATE COMMISSION

STAFF OF THE IDAHO REAL
ESTATE COMMISSION,

Petitioner,

v.

PAUL H. RYAN,

Respondent.

Case Nos. 19-0595 and 20-0244

**STIPULATION AND
CONSENT ORDER**

The Staff of the Idaho Real Estate Commission ("Staff") has received information constituting sufficient grounds for the initiation of an administrative action against Respondent Paul H. Ryan. The parties therefore stipulate and agree to settle this matter in lieu of administrative hearings before the Commission upon the following terms:

1. Ryan is a licensed designated broker holding license number DB39666. At all times relevant to this Stipulation and Consent Order ("Stipulation") Ryan was the designated broker of Marcus & Millichap Real Estate Investment Services of Seattle, Inc. ("M&M Boise"). Ryan is subject to the jurisdiction and discipline of the Idaho Real Estate Commission.

PARTIES

2. Marcus & Millichap Real Estate Investment Services, Inc. and its affiliated entities and subsidiaries (collectively, "M&M") is a commercial real estate brokerage and investment services company that operates numerous offices throughout the United States and Canada, including offices in the following locations:

- a. Phoenix, Arizona, where an M&M subsidiary is licensed as a real estate brokerage under Marcus & Millichap Real Estate Investment Services, Inc. ("M&M Phoenix");
 - b. Chicago, Illinois, where an M&M subsidiary is licensed as a real estate brokerage under Marcus & Millichap Real Estate Investment Services of Chicago, Inc. ("M&M Chicago"); and
 - c. Boise, Idaho, where an M&M subsidiary is licensed as a real estate brokerage under Marcus & Millichap Real Estate Investment Services of Seattle, Inc. ("M&M Boise").
3. Nicholas G. Kanich, at all times relevant to this stipulation, was a licensed real estate broker in Illinois affiliated with M&M Chicago. Kanich has never been licensed in Idaho.
4. Mark Ruble is a licensed real estate salesperson in Arizona affiliated with M&M Phoenix. Ruble has never been licensed to practice real estate in Idaho.

ALLEGATIONS

5. Ryan engaged in reckless conduct when he allowed (1) M&M Phoenix and Ruble to market and sell an Idaho commercial property without a license; and (2) M&M Chicago and Kanich to list and market an Idaho commercial property for sale without a license.

FACTUAL BACKGROUND

6. This matter arises out of Ryan's obligations as the responsible broker over the sale or attempted sale of two (2) Idaho real estate transactions.

Freddy's Property (M&M Phoenix transaction)

7. On August 26, 2019, Ryan, acting in his capacity as an M&M broker, entered into an Interstate Brokerage Cooperation Agreement with M&M Phoenix relating to an Idaho

commercial property listing for Freddy's Frozen Custard & Steakburgers ("Freddy's" or "Idaho property"), located at 5009 Cleveland Boulevard in Caldwell, Idaho. The agreement identified Ryan as "Broker of Record" ("BOR") and indicated that he would work with M&M Phoenix and Ruble to sell the Idaho property. The agreement commenced on August 26, 2019 and did not include an expiration date. The agreement stated that the "BOR will be compensated by Marcus & Millichap pursuant to separate agreement and in accordance with Marcus & Millichap's policies and procedures." Ryan and Ruble, among others, signed the agreement.

8. On August 30, 2019, Ryan, acting on behalf of M&M Boise, entered into a Representation Agreement with the owners ("Sellers") of the Idaho property. The agreement terms were from August 26, 2019 to January 31, 2020. The agreement included a list price \$1,826,000.00 and indicated that Sellers would pay a four (4)-percent commission upon closing. Ryan signed the agreement on August 30, 2019, in his capacity as BOR.

9. Throughout September and October of 2019, Ruble marketed the Idaho property on M&M Phoenix's website. The "Broker Information" section of the marketing materials identified Ruble as "agent" and included his individual contact information. Neither Ryan nor M&M Boise were identified in the marketing materials. The marketing materials on M&M Phoenix's website included a link to a downloadable marketing package for the Idaho property. This marketing package included Ryan's name as the Broker of Record and indicated he was affiliated with M&M Boise.

10. Ruble also marketed the Idaho property on LoopNet, an online commercial real estate marketplace. The marketing materials included Ruble's name and contact information, but did not identify either Ryan or M&M Boise.

STIPULATION AND CONSENT ORDER - 3.

11. In or around early November 2019, Sydney Burtwell ("Buyer's agent"), an Idaho real estate salesperson acting on behalf of her buyer client, began negotiating with Ruble regarding the terms of a potential purchase of the Idaho property. During the entirety of that process and the ultimate closing of the transaction, Buyer's agent communicated exclusively with Ruble and never had any contact with Ryan.

12. For example, from November 4, 2019 through November 8, 2019, Buyer's agent and Ruble exchanged numerous emails while negotiating the terms of a potential transaction and never included or copied Ryan in the correspondence.

13. On November 7, 2019, Buyer's agent prepared a \$1,800,000.00 purchase and sale agreement for the Idaho property. The agreement identified "Marcus & Millichap" as the listing agency but did not identify a specific M&M franchise office. Additionally, pursuant to Ruble's request, it did not identify a listing agent.

14. Later that same day on November 7, 2019, Sellers accepted Buyer's offer.

15. On November 8, 2019, Buyer's transaction coordinator emailed Ruble and stated that the purchase and sale agreement needed to be amended to identify an Idaho-licensed listing agent. Shortly thereafter, the parties executed an addendum and identified Ryan as the listing agent.

16. On December 16, 2019, the Idaho property transaction closed. Closing documents listed M&M Phoenix as one (1) of the brokers in the transaction and stated that it received a \$25,738.00 commission. Neither Ryan nor M&M Boise were identified in the closing settlement statement, and they did not receive any commission at closing.

17. After closing, M&M Phoenix applied for an Idaho Cooperative License to sell the Idaho property, even though it had already been sold. Staff, however, rejected the application

STIPULATION AND CONSENT ORDER - 4.

because it did not identify an Arizona designated broker. Rather, the application listed Ruble as the designated broker of M&M Phoenix when, in fact, he was not the broker of the franchise office.

18. M&M Phoenix, Ruble, and Ryan never obtained the required Cooperative License to market and sell the Idaho property.

Walgreen's Property (M&M Chicago)

19. On July 13, 2020, M&M prepared an Exclusive Authorization to Sell or Exchange Representation Agreement, which indicated that M&M Boise intended to market and sell an Idaho commercial property listing for a Walgreens store located at 1570 E. Fairview Avenue in Meridian, Idaho. The terms of the agreement were from July 27, 2020 through January 27, 2021, and the property's list price was \$5,500,000.00. David Bradley, acting on behalf of M&M Chicago, and Ryan, acting on behalf of M&M Boise, signed the agreement on August 19, 2020 and August 20, 2020, respectively.

20. On August 10, 2020, Kanich emailed a potential buyer ("Buyer") located in Idaho about the Walgreens property. Kanich stated, in pertinent part, as follows:

I wanted to reach out as I noticed you recently transacted in the Idaho market in the past few years. We are bringing out a freestanding single tenant Walgreens Asset in the Boise [metropolitan area] and I was curious if you might have any interest in taking a look at it before we go wide to the market with the property. I would be happy to discuss the finer details with you over the phone or I can shoot you over the full marketing package if you are interested in reviewing.

21. Also on August 10, 2020, Kanich emailed the property's Offering Memorandum ("OM") to Buyer and stated, "Let's connect if you have any questions or interest after reviewing." The OM's cover page prominently stated that the Walgreens property was "exclusively listed by"

Kanich and also identified Ryan as the "Broker of Record." The OM also provided Kanich's contact information and his Illinois real estate license number.

22. On August 19, 2020, Ryan, acting in his capacity as an M&M broker, entered into an Interstate Brokerage Cooperation Agreement with Kanich relating to the Walgreens property. The agreement identified Ryan as "Broker of Record" ("BOR") and contained, in pertinent part, the following provisions:

- a. Ryan and Kanich would "work in cooperation pursuant to Marcus & Millichap's policies and procedures governing real estate brokerage activities in the State of Idaho . . . including, without limitation, rules governing brokerage by out-of-state licensees within the state."
- b. Ryan, as the BOR, "shall be responsible for supervising all licensed activities by [Kanich] within the state and shall review and approve all marketing materials, listing agreement or amendments thereto, and other documents requiring the signature or review of a real estate broker or agent" in Idaho.
- c. Ryan, as the BOR, would be "compensated by Marcus & Millichap pursuant to a separate agreement and in accordance with Marcus & Millichap's policies and procedures."

23. The agreement was signed by Ryan, Kanich, and Bradley (an M&M regional manager acting as a representative of M&M Chicago), among others.

24. M&M Chicago, Ryan, and Kanich never obtained a required Cooperative License to market and sell the Walgreens property.

VIOLATIONS

25. Respondent's actions, as set forth in this Stipulation, violated Idaho Real Estate License Law, and he hereby stipulates and agrees to cease such activities. Specifically, Respondent's conduct violated:

- a. Idaho Code Section 54-2060(12) - Reckless conduct in a regulated real estate transaction. Conduct is reckless if, when taken as a whole, it is

STIPULATION AND CONSENT ORDER - 6.

conduct which substantially fails to meet the generally accepted standard of care in the practice of real estate in Idaho.

- Ryan allowed M&M Chicago, M&M Phoenix and several of its licensees to list and market two Idaho properties without an Idaho license or a Cooperative License.
Ryan allowed (1) M&M Phoenix and Ruble to market and sell an Idaho commercial property without a license; and (2) M&M Chicago and Kanich to list and market an Idaho commercial property for sale without a license.

26. This matter came before the Idaho Real Estate Commission at a regularly scheduled meeting and, pursuant to Idaho Code Section 54-2058(1), the Executive Director submitted a Probable Cause Memo alleging Ryan engaged in certain misconduct in violation of the Idaho Real Estate License Law and Rules. After reviewing the Probable Cause Memo, the Commission authorized Staff to pursue formal action against Ryan.

STIPULATED DISCIPLINE

27. Respondent acknowledges and agrees that the following discipline imposed for the violations set forth herein is reasonable under the circumstances, although not binding upon the Commission until it issues an Order accepting this Stipulation.

Formal Reprimand:

- a. The Commission's Order shall constitute a formal reprimand of Ryan for the actions set forth in the Stipulation.

Fines and Fees:

- b. Ryan shall pay a Three Thousand Dollar (\$3,000.00) civil fine within thirty (30) days of the service date of the Commission's Order.
- c. Ryan shall pay the costs and attorney fees in the amount of Six Hundred Dollars (\$600.00) within thirty (30) days of the service date of the Commission's Order. All monies paid by Ryan shall be applied towards the costs and attorney fees award first before application to the civil fine.

STIPULATION AND CONSENT ORDER - 7.

- d. In the event Staff agrees to accept installment payments of any fine or fees under this Stipulation, should Ryan fail to timely make any one (1) payment as required by its due date, then all sums remaining unpaid shall immediately become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff's right, upon any subsequent failure by Ryan to make a timely payment, to invoke this provision to require immediate and full payment.
- e. All fines and attorney fees are due and payable pursuant to the terms of the Order issued by the Idaho Real Estate Commission. Payment(s) must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the date(s) set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

Continuing Education:

- f. Ryan shall successfully complete the following Idaho real estate educational course(s) within one hundred eighty (180) days after the service date of the Commission's Order:
- Real Estate Law
 - Business Conduct and Office Operations
- g. **These course(s) shall be completed on or before 5:00 p.m. MST/MDT of the deadline day. In addition, within forty-eight (48) hours of completing said courses, Ryan shall be responsible for mailing, emailing, or faxing (208-334-2050) a copy of the completion certificate(s) to the Idaho Real Estate Commission, Attention: Chief Investigator. Should Ryan fail to provide Commission Staff with a completion certificate on or before the deadline, Ryan's real estate license shall be suspended pursuant to the terms of the Commission's Final Order.**
- h. Ryan is on notice that pursuant to Idaho Code Section 54-2023(5): "No licensee shall obtain continuing education credit for education ordered by the commission as part of a disciplinary action." **Ryan shall not submit such commission-ordered educational courses for continuing education credit.**

ACKNOWLEDGEMENTS AND WAIVERS

In entering into this Stipulation, Respondent (or his legally authorized representative) acknowledges, understands, and admits the following:

28. This Stipulation is filed pursuant to the provisions of Idaho Code Sections 54-2058, 54-2059 and 54-2063, IDAPA 04.11.01.280.03, and complies with Chapter 52, Title 67, of the Idaho Code.

29. Respondent understands and admits the allegations pending before the Commission as set forth in this Stipulation. Respondent understands that these allegations constitute cause for disciplinary action upon Respondent's license or ability to practice real estate in the State of Idaho.

30. Respondent voluntarily waives the right to a full and complete hearing regarding all matters set forth in this Stipulation, including the right to reconsideration of the Commission's orders; the right to judicial review of the Commission's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate in the State of Idaho.

31. Respondent agrees that the Commission may impose the disciplinary action set forth in this Stipulation without further process, evidence, or proof. Moreover, the Commission and Staff, without further notice or action otherwise required by the Idaho Code or IDAPA rules, is authorized to enforce all terms of this Stipulation, including, but not limited to, suspending Respondent's license or imposing the balance of any withheld discipline or civil penalty fine in the event Respondent fails to timely comply with any term or provision set forth herein.

32. Respondent agrees that this Stipulation may be presented to the Commission *ex parte* by Staff, and Respondent waives any and all rights to a hearing.

STIPULATION AND CONSENT ORDER - 9.

33. In the event the Commission in its discretion does not approve this Stipulation, this Stipulation shall be null and void and shall not be used for any purpose by any party. However, a formal Complaint may be filed against Respondent and a hearing may be held before the Commission to consider the allegations set forth in the Complaint. Under such circumstances, Respondent waives any potential right to challenge the Commission's authority or impartiality to preside over or hear the allegations based on its consideration and rejection of this Stipulation. Respondent does not waive any other rights regarding challenges to Commission members.

34. In the event Respondent fails to comply with any of the terms of this Stipulation, the Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Stipulation without further notice or a hearing.

35. Respondent understands and agrees that Respondent may not withdraw or seek to rescind this Stipulation prior to the time the Commission considers and acts upon it.

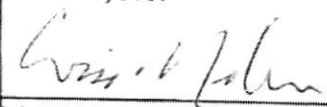
36. A faxed or scanned executed copy of this Stipulation shall be sufficient and the same as the original signed document.

37. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

NAYLOR & HALES, P.C.

Date: 5/17/2021

By


Eric F. Nelson, Of the Firm
Attorneys for Staff of the Idaho Real
Estate Commission

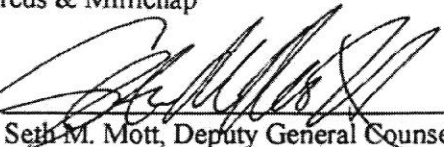
Date: 5/17/21


Paul H. Ryan

APPROVED AS TO FORM BY:

STIPULATION AND CONSENT ORDER - 10.


Marcus & Millichap

By 
Seth M. Mott, Deputy General Counsel
Attorneys for Respondent

ORDER

Pursuant to Idaho Code §§ 54-2058, 54-2059 and 54-2063, the foregoing is adopted as the decision of the Idaho Real Estate Commission in this matter and shall be effective on the 26 day of MAY, 2021. IT IS SO ORDERED.

IDAHO REAL ESTATE COMMISSION

By 
Commission Chair

CERTIFICATE OF SERVICE

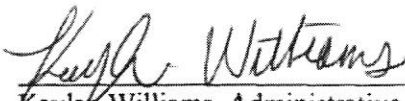
I hereby certify that on the 27th day of May, 2021, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Seth M. Mott
Marcus & Millichap
Deputy General Counsel
111 South Main Street, Ste. 500
Salt Lake City, UT 84111

☒ U.S. Mail
☐ Certified Mail, Return Receipt Requested
☐ Email: Seth.mott@marcusmillichap.com
☐ Fax Transmission

Eric F. Nelson
Naylor & Hales, P.C.
950 W. Bannock St., Ste. 610
Boise, ID 83702

☐ U.S. Mail
☐ Hand Delivered
☒ Email: eric@navlorhales.com
☐ Fax Transmission: 208-383-9516


Kaylan Williams, Administrative Assistant
Staff of the Idaho Real Estate Commission

BEFORE THE IDAHO REAL ESTATE COMMISSION

IDAHO REAL ESTATE COMMISSION,

Petitioner,

v.

PEGGY LEE BLACK,

Respondent.

Case No. 19-0312

**STIPULATION AND
CONSENT ORDER**

The Idaho Real Estate Commission ("Commission") has received information constituting sufficient grounds for the initiation of an administrative action against Respondent Peggy Lee Black. Thus, in entering into this Stipulation and Consent Order ("Stipulation"), the parties stipulate and agree to settle this matter in lieu of administrative hearings before the Commission upon the following terms:

1. Black is a licensed real estate salesperson holding license number SP36408 with Silvercreek Realty Group in Meridian, Idaho. Black is subject to the jurisdiction and discipline of the Idaho Real Estate Commission.

PARTIES

2. Douglas and Caroline Chutich sold their property, located at 602 Chicago Street in Nampa, Idaho ("Chicago property") to Dalton Black.

3. Dalton Black ("husband") is a contractor with experience "flipping" houses. He is married to Black and, at all times relevant to this Stipulation, was represented by Black when he purchased the Chicago property from the Chutichs and subsequently sold it to Denise and Jonathan Smith.

4. Denise and Jonathan Smith ("buyers") purchased the Chicago property from Black's husband, Dalton Black.

ALLEGATIONS

5. Black's husband purchased the Chicago property and then began renovating it in order to flip it for a profit. During the renovation process, Black's husband failed to obtain a variety of required permits. Black then represented her husband in selling the Chicago property without ensuring that the required permits had been obtained and without disclosing this fact to buyers.

6. Black also engaged in numerous advertising violations. Specifically, Black advertised herself under previous names and assumed names; advertised her husband, an inactive licensee, on her website as if he had an active real estate license; failed to include her brokerage's licensed business name in her advertising; and failed to properly identify her brokerage name in her advertisements. Additionally, Black failed to cooperate with the Staff of the Idaho Real Estate's investigation into her conduct when she failed to produce a relevant video to Staff and then removed and deleted the video from her online accounts in hopes of concealing it from Staff. Lastly, Black failed to provide or have her husband sign an Agency Disclosure Brochure for the Chicago property until the day of closing, and inaccurately indicated she was representing her husband as an agent even though she did not execute a Buyer Representation Agreement with him until the day of closing.

FACTUAL BACKGROUND

First Transaction

7. On May 1, 2018, the Chutichs listed their Chicago property for \$140,000.00. That same day, they signed a Seller's Property Condition Disclosure Form, which disclosed the following: there had been a minor leak in the bathroom, which resulted in the Chutichs filing a

claim with their homeowner's insurance company; an exterminator had treated the property; the septic system was last pumped on April 6, 2018; and no additions or alterations had been made without building permits.

8. On May 6, 2018, Black prepared a Purchase and Sale Agreement ("offer") for her husband to purchase the Chicago property. This offer stated that Black was working with her husband as his agent and included the following notation: "buyer related to agent." Black's husband ultimately entered into a contract to purchase the Chicago property for \$159,000.00.

9. Also on May 6, 2018, Black's husband signed the Seller's Property Condition Disclosure Form for the Chicago property.

10. On May 31 2018, Black and her husband signed a Buyer Representation Agreement indicating Black would represent her husband in the purchase of residential or residential income properties in the city of Nampa and Canyon County. Black back-dated the agreement to begin on April 2, 2018 and end on September 30, 2018. Also on May 31, 2018, Black's husband signed an agency disclosure brochure and a due diligence disclosure.

11. The Chicago property transaction closed on May 31, 2018. At closing, Black signed a Quitclaim Deed and her husband took possession of the Chicago property as his sole and separate property.

12. Shortly after closing, on June 2, 2018, the parties amended their contract for the Chicago property to add a metes and bounds description to identify the property.

Second Transaction

13. On September 13, 2018, Black and her husband signed a Seller Representation Agreement in which the husband listed the Chicago property for sale with Black for \$289,000.00. This agreement was to begin that day and end on March 31, 2019, and stated that three (3)-percent

STIPULATION AND CONSENT ORDER - 3.

of the contract price would be paid to a cooperating brokerage and Black's brokerage would receive \$450.00.

14. Also on September 13, 2018, Black's husband signed an agency disclosure brochure, a due diligence disclosure, and a lead-based paint disclosure. He also signed a Seller's Property Condition Disclosure Form wherein he did not disclose any of the property issues that the Chutichs disclosed to him four (4) months earlier in their May 1, 2018 disclosure form.

15. On September 17, 2018, buyers submitted \$269,900.00 offer to purchase the Chicago property. This offer indicated the earnest money would become nonrefundable after the inspection contingency was removed and that buyers were responsible for any septic inspections. The buyers signed the offer, the lead-based paint disclosure, and the property condition disclosure form the same day.

16. Later that same day on September 17, 2018, Black's husband accepted buyers' offer to purchase the Chicago property.

17. On September 21, 2018, an inspector conducted a home inspection of the Chicago property.

18. On September 24, 2018, buyers signed an Inspection Contingency Notice wherein they requested nineteen (19) specific and somewhat extensive repairs. Black's husband signed the notice on September 26, 2018.

19. On November 2, 2018, buyers and Black's husband signed an addendum indicating a master bedroom window would be replaced before closing.

20. Also, on November 2, 2018, a septic company pumped and inspected the septic tanks at the Chicago property. The inspection revealed that the septic system had two (2) "very old

cement tanks [that were] showing signs of age” but still appeared “to be operable” and in fair condition.

21. On November 5, 2018, the Chicago property transaction closed. Black’s husband was identified as the only seller.

22. Also, on November 5, 2018, Black and her husband signed a warranty deed granting the Chicago property to buyers. This deed stated that Black and her husband were married.

Renovation Work

23. On July 16, 2019, buyers obtained a plumbing permit from the City of Nampa and described that the work to be completed at the Chicago property as "Plumbing inspection for remodel done without permit."

24. On July 22, 2019, buyers obtained a \$8,624.00 estimate to update the septic system at the Chicago property.

25. On July 24, 2019, the City of Nampa's Department of Building and Safety emailed buyers four (4) correction letters as it relates to “building, electrical, mechanical, and plumbing” issues with the Chicago property. The emailed stated, in pertinent part, as follows:

It appears that due to the lack of record of inspections and the corrections evident during the walk through, that inspections were not completed for this project. The attached letters outline the actions that need to take place in order for the City of Nampa to sign off on a “Building Final” for this structure. Have the individual subcontractors mentioned on the correction letters take out mechanical, electrical and plumbing permits, evaluate the systems as outlined, make repairs as needed and sign off on the permits. When the individual trades have completed their evaluation and repairs, the City of Nampa will conduct a Building Final Inspection. . . .

26. A subsequent investigation conducted by the Staff of the Idaho Real Estate Commission ("Staff") revealed that the Chicago property's original owner had pulled permits to remodel the property but never completed the work or closed the permits. When Black's husband purchased the Chicago property, he completed the renovation work, but never closed the permits or obtained new ones.

27. In August 2019, buyers obtained the following estimates to correct various issues at the Chicago property:

- a. On August 4, 2019, buyers obtained a \$4,090.00 estimate to correct and update the electrical system at the property.
- b. On August 5, 2019, buyers obtained \$6,935.00 estimate to correct and replace the HVAC system at the property.
- c. On August 19, 2019, buyers obtained \$754.60 estimate to correct the hot water heater system at the property.

Advertising

28. On September 3, 2019, Staff reviewed Black's advertising and discovered the following:

- a. Black identified herself on her website, www.allredblack.com, as "Peggy Allred-Black." Additionally, her website advertised Black's husband as a real estate salesperson at "Silvercreek Realty" even though his license was on inactive status.
- b. Black's personal Facebook page as well as the Facebook page for the Allred Black Team associated with Silvercreek Realty Group identified her as "Peggy Allred Black." Additionally, Black's personal Facebook page described her as a realtor at "Silvercreek Realty" rather than Silvercreek Realty Group.
- c. Black also maintained a separate Facebook page for "Peggy Pryor Realtor."

29. On September 4, 2019, Staff mailed and emailed Black and notified that she was under investigation as it relates to her involvement with the Chicago property transactions. As a

STIPULATION AND CONSENT ORDER - 6.

corollary, Staff asked Black why she was advertising herself under several names. Additionally, Staff requested that Black provide it with copies of all videos, photographs and other items related to the investigation. In so doing, Staff instructed her to "ENSURE THE PRESERVATION OF all evidence, documents, and information that may be relevant to the transactions" at issue.

30. On September 6, 2019, Black provided Staff with a video of her providing a walk-through tour of the Chicago property when the renovation work was nearly complete. However, she failed to provide Staff with a video posted on the Allred Black Team page on Facebook June 5, 2018, wherein she provided a walk-through tour of the Chicago property when it was in the middle of the renovation process and stripped down to the studs.

31. On or around September 10, 2019, Black removed and deleted the June 5, 2018 renovation video of the Chicago property from her social media accounts, including the Facebook page for the Allred Black Team.

32. On September 10, 2019, Staff sent Black a follow-up email asking her there were any images or videos of the Chicago property from during the remodeling process. Black responded that she could not find anything else.

33. On September 11, 2019, Staff responded to Black and reminded her of her obligation to preserve evidence as instructed in its September 4, 2019 letter. Staff also asked Black why she deleted the June 5, 2018 renovation video shortly after it had instructed her to preserve such evidence.

34. Later that same day on September 11, 2019, Black responded to Staff. She claimed she did not destroy any evidence, rather, she merely removed the video at issue from her website and social media accounts.

STIPULATION AND CONSENT ORDER - 7.

VIOLATIONS

35. Respondent's conduct as set forth in this Stipulation violated the following provisions of the Idaho Real Estate License Law:

- a. Idaho Code Section 54-2053(4): No advertising shall provide any information to the public or to prospective customers or clients that is misleading in nature. Information is misleading if, when taken as a whole, there is a distinct probability that such information will deceive the persons whom it is intended to influence.
 - Black advertised herself under previous names and assumed names; advertised her husband, an inactive licensee, on her website as if he had an active real estate license; failed to include her brokerage's licensed business name in her advertising; and failed to properly identify her brokerage name in her advertisements.
- b. Idaho Code Section 54-2058(3) **AUTHORITY TO INVESTIGATE AND DISCIPLINE**: The commission also has the authority to investigate the action of any Idaho licensee as provided in this section. The licensee or broker shall answer all reasonable investigative questions of the commission, and must make available, promptly upon request, any and all records to the commission at the licensee's own cost and at the location or in the manner requested by the commission:
 - Black failed to cooperate with the Staff's investigation when she removed a video related to the Chicago property from her online accounts and failed to provide Staff with the video.
- c. Idaho Code Section 54-2060(5) **GROUND FOR DISCIPLINARY ACTION**: A person found guilty of misconduct while performing or attempting to perform any act requiring an Idaho real estate broker or salesperson's license, regardless of whether the act was for the person's own account or in his capacity as broker or salesperson, shall be subject to disciplinary action by the commission. The following acts shall constitute misconduct within the meaning of this section: (5) Failure or refusal, upon lawful demand, to disclose any information within the person's knowledge, or to produce any documents, books or records in the person's possession for inspection by the commission or its authorized representative whether with a buyer or seller, must be in writing in the manner required:
 - Black attempted to conceal a video from Staff relevant to its investigation.

- d. Idaho Code Section 54-2060(6) GROUNDS FOR DISCIPLINARY ACTION: A person found guilty of misconduct while performing or attempting to perform any act requiring an Idaho real estate broker or salesperson's license, regardless of whether the act was for the person's own account or in his capacity as broker or salesperson, shall be subject to disciplinary action by the commission. The following acts shall constitute misconduct within the meaning of this section: (6) Acting as a real estate broker or salesperson under an assumed name.
- Black advertised herself and worked under an assumed name.
- e. Idaho Code Section 54-2085(1) DISCLOSURE AND WRITING REQUIREMENTS — AGENCY DISCLOSURE BROCHURE AND REPRESENTATION CONFIRMATION: A licensee shall give to a prospective buyer or seller at the first substantial business contact the agency disclosure brochure adopted or approved by the Idaho real estate commission. The commission by motion shall establish the form and contents of the brochure in accordance with the provisions of this chapter. Each brokerage shall keep a signed and dated record of a buyer or seller's receipt of the agency disclosure brochure.
- Black did not have her husband sign an Agency Disclosure Brochure until the day of closing.
- f. Idaho Code Section 54-2085(4) DISCLOSURE AND WRITING REQUIREMENTS — AGENCY DISCLOSURE BROCHURE AND REPRESENTATION CONFIRMATION: In addition, a purchase and sale agreement, an attachment thereto, or other document drafted in connection with a regulated real estate transaction shall contain the following confirmation of the relationship, whether it involved representation or not, between the buyer, seller and licensees involved.
- Black inaccurately indicated she was representing her husband as an agent as she did not sign a Buyer Representation Agreement with him until the day of closing.
- g. Idaho Code Section 54-2085(5) DISCLOSURE AND WRITING REQUIREMENTS — AGENCY DISCLOSURE BROCHURE AND REPRESENTATION CONFIRMATION: The failure of a licensee to timely give a buyer or seller the agency disclosure brochure or the failure of a licensee to properly and timely obtain any written agreement or confirmation required by this chapter shall be a violation of the Idaho real estate license law and may subject the licensee to disciplinary action

according to the provisions of sections 54-2058 through 54-2078, Idaho Code.

- Black failed to provide the Agency Disclosure Brochure until the day of closing. She also inaccurately indicated she was representing her husband as an agent as they did not sign a Buyer Representation Agreement until the day of closing.

36. This matter came before the Idaho Real Estate Commission at a regularly scheduled meeting and, pursuant to Idaho Code Section 54-2058(1), the Executive Director submitted a Probable Cause Memo alleging Respondent engaged in certain misconduct in violation of the Idaho Real Estate License Law and Rules. After reviewing the Probable Cause Memo, the Commission authorized Staff to pursue formal action against Respondent.

STIPULATED DISCIPLINE

37. Respondent acknowledges and agrees that the following discipline imposed for the violations set forth in this Stipulation is reasonable under the circumstances, although not binding upon the Commission until it issues an Order accepting this Stipulation.

Formal Reprimand:

- a. The Stipulation shall constitute a formal reprimand of Respondent for the actions set forth herein.

License Suspension:

- b. Respondent's license, SP36408, shall be suspended for a period of one (1)-year; provided, however, the entirety of that suspension shall be stayed pending Respondent's full compliance with all terms and conditions of this Stipulation.
- c. In the event Respondent fails to timely comply with any term or condition of this Stipulation, the entire one (1)-year suspension shall be imposed, and the Commission may seek to impose additional discipline.

Fines and Fees:

- d. Respondent shall pay a Two Thousand Five Hundred Dollar (\$2,500.00) civil fine within thirty (30) days of the service date of the Commission's Order.
- e. Respondent shall pay the costs and attorney fees in the amount of Six Hundred Dollars (\$600.00) within thirty (30) days of the service date of the Commission's Order. All monies paid by Respondent shall be applied towards the costs and attorney fees award first before application to the civil fine.
- f. In the event Staff agrees to accept installment payments of any fine or fees under this Stipulation, should Respondent fail to timely make any one (1) payment as required by its due date, then all sums remaining unpaid shall immediately become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff's right, upon any subsequent failure by Respondent to make a timely payment, to invoke this provision to require immediate and full payment.
- g. All fines and attorney fees are due and payable pursuant to the terms of the Order issued by the Idaho Real Estate Commission. Payment(s) must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the date(s) set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

Continuing Education:

- h. Respondent shall successfully complete the following Idaho real estate educational course(s) within one hundred eighty (180) days after the service date of the Commission's Order:
 - Brokerage Management
- i. **These course(s) shall be completed on or before 5:00 p.m. MST/MDT of the deadline day. In addition, within forty-eight (48) hours of completing said courses, Respondent shall be responsible for mailing, emailing, or faxing (208-334-2050) a copy of the completion certificate(s) to the Idaho Real Estate Commission, Attention: Chief Investigator. Should Respondent fail to provide Commission Staff with a**

completion certificate on or before the deadline, Respondent's real estate license shall be suspended pursuant to the terms of the Commission's Final Order.

- j. Respondent is on notice that pursuant to Idaho Code Section 54-2023(5): "No licensee shall obtain continuing education credit for education ordered by the commission as part of a disciplinary action." **Respondent shall not submit such commission-ordered educational courses for continuing education credit.**

ACKNOWLEDGEMENTS AND WAIVERS

In entering into this Stipulation, Respondent (or Respondent's legally authorized representative) acknowledges, understands, and admits the following:

38. This Stipulation is filed pursuant to the provisions of Idaho Code Sections 54-2058, 54-2059 and 54-2063, IDAPA 04.11.01.280.03, and complies with Chapter 52, Title 67, of the Idaho Code.

39. Respondent understands and admits the allegations pending before the Commission as set forth in this Stipulation and has had the opportunity to discuss them with legal counsel. Respondent understands that these allegations constitute cause for disciplinary action upon Respondent's license or ability to practice real estate in the State of Idaho.

40. Respondent voluntarily waives the right to a full and complete hearing regarding all matters set forth in this Stipulation, including the right to reconsideration of the Commission's orders; the right to judicial review of the Commission's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate in the State of Idaho.

41. Respondent agrees that the Commission may impose the disciplinary action set forth in this Stipulation without further process, evidence, or proof. Moreover, the Commission and Staff, without further notice or action otherwise required by the Idaho Code or IDAPA rules,

STIPULATION AND CONSENT ORDER - 12.

is authorized to enforce all terms of this Stipulation, including, but not limited to, suspending Respondent's license or imposing the balance of any withheld discipline or civil penalty fine in the event Respondent fails to timely comply with any term or provision set forth herein.

42. Respondent agrees that this Stipulation may be presented to the Commission *ex parte* by Staff, and Respondent waives any and all rights to a hearing.

43. In the event the Commission in its discretion does not approve this Stipulation, this Stipulation shall be null and void and shall not be used for any purpose by any party. However, a formal Complaint may be filed against Respondent and a hearing may be held before the Commission to consider the allegations set forth in the Complaint. Under such circumstances, Respondent waives any potential right to challenge the Commission's authority or impartiality to preside over or hear the allegations based on its consideration and rejection of this Stipulation. Respondent does not waive any other rights regarding challenges to Commission members.

44. In the event Respondent fails to comply with any of the terms of this Stipulation, the Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Stipulation without further notice or a hearing.

45. Respondent understands and agrees that Respondent may not withdraw or seek to rescind this Stipulation prior to the time the Commission considers and acts upon it.

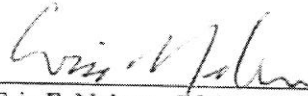
46. A faxed or scanned executed copy of this Stipulation shall be sufficient and the same as the original signed document.

47. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.


NAYLOR & HALES, P.C.

Date: 5/10/2021

By


Eric F. Nelson, Of the Firm
Attorneys for Staff of the Idaho Real
Estate Commission

Date: 5-10-21

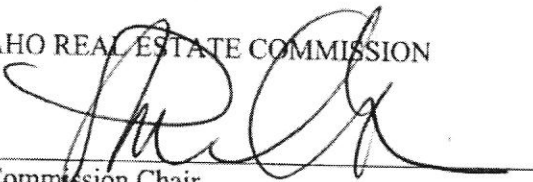

Peggy Lee Black

ORDER

Pursuant to Idaho Code §§ 54-2058, 54-2059 and 54-2063, the foregoing is adopted as the decision of the Idaho Real Estate Commission in this matter and shall be effective on the 24 day of MAY, 2021. IT IS SO ORDERED.

IDAHO REAL ESTATE COMMISSION

By


Commission Chair

CERTIFICATE OF SERVICE

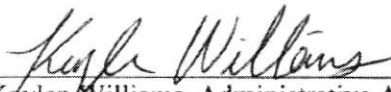
I hereby certify that on the 27th day of May, 2021,
I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Peggy Lee Black
Silvercreek Realty Group
1099 South Wells
Meridian, ID 83642

☒ U.S. Mail
☐ Certified Mail, Return Receipt Requested
☐ Fax Transmission

Eric F. Nelson
Naylor & Hales, P.C.
950 W. Bannock St., Ste. 610
Boise, ID 83702

☐ U.S. Mail
☐ Hand Delivered
☒ Email: eric@naylorhales.com
☐ Fax Transmission: 208-383-9516



Kaylan Williams, Administrative Assistant
Staff of the Idaho Real Estate Commission

BEFORE THE IDAHO REAL ESTATE COMMISSION

IDAHO REAL ESTATE COMMISSION,

Petitioner,

v.

RICHARD CRAIG GROVES,

Respondent.

Case No. 20-2054

**STIPULATION AND
CONSENT ORDER**

The Idaho Real Estate Commission ("Staff") has received information constituting sufficient grounds for the initiation of an administrative action against Respondent Richard Craig Groves. Thus, in entering into this Stipulation and Consent Order ("Stipulation"), the parties therefore stipulate and agree to settle this matter in lieu of administrative hearings before the Commission upon the following terms:

1. Groves is a licensed real estate designated broker holding license number DB2971 with Park Pointe Realty, Inc., doing business as John L. Scott BOI in Boise, Idaho. Groves is subject to the jurisdiction and discipline of the Idaho Real Estate Commission.

PARTIES

2. Katherine Mericle ("Seller"), at all times relevant to this stipulation, owned a property located at 3912 S. Shimmering Way ("Shimmering property"), in Meridian, Idaho. Mericle was represented by Constance Kelley, the designated broker of Marathon Realty of Idaho ("Listing Brokerage"), in her attempts to sell the property.

3. Senada Cufurovic ("Buyer") attempted to purchase the Shimmering property from Seller. At all times relevant to this Stipulation, Seller was represented by Debbie Kerrico, a salesperson with Grove's brokerage.

STIPULATION AND CONSENT ORDER - 1.

4. Debbie Kerrico is a licensed real estate salesperson at Grove's brokerage and represented a Buyer in her attempt to purchase the Shimmering property from Seller. As Kerrico's designated broker, Groves was responsible for supervising Kerrico at all times relevant to this Stipulation.

ALLEGATIONS

5. Groves failed to notify or adequately inform all parties about his intent to return \$5,000.00 earnest money to Buyer.

FACTUAL BACKGROUND

6. On January 13, 2020, Kelley prepared and entered into an Exclusive Seller Representation Agreement with Seller as it relates to the Shimmering property. The agreement terms were from January 14, 2020 to July 14, 2020, and included a list price of \$449,900.00.

7. On February 3, 2020, Kerrico prepared an Exclusive Buyer Representation Agreement with Buyer. The agreement terms were from February 1, 2020 to August 1, 2020.

8. On February 11, 2020, Kerrico prepared a Purchase and Sale Agreement for Buyer wherein Buyer offered to purchase the Shimmering property for \$435,000.00. Buyer also agreed to pay \$5,000.00 in earnest money, which would be held by Groves as the designated broker.

9. On February 12, 2020, Seller entered into a contract to sell the Shimmering property to Buyer for \$435,000.00. That same day, Buyer submitted the earnest money to Groves, who held the \$5,000.00 in his trust account.

10. On March 10, 2020, Buyer was notified by her lender that she had been denied funding to purchase the Shimmering property. Groves subsequently informed Seller, via the Listing Brokerage, of Buyer's inability to obtain funding for the property.

STIPULATION AND CONSENT ORDER - 2.

11. On March 19, 2020, the Listing Brokerage sent Groves a demand letter stating that Buyer needed to either (1) fulfill the contract to purchase the Shimmering property; or (2) surrender the earnest money. Groves responded via email later that day and stated he would discuss the issue with Buyer. Groves did not, however, indicate whether the earnest money would be surrendered to Seller.

12. On March 23, 2020, Kerrico prepared a Contract Termination and/or Release of Earnest Money for the Shimmering property, which Buyer signed the same day. Seller, however, refused to sign the document or release Buyer from her contractual obligations.

13. On April 8, 2020, Kerrico emailed Groves and asked about the status of the earnest money. Groves responded via email and stated that the earnest money should be returned to Buyer. Groves included Buyer on the email. Groves did, not, however, inform the Listing Brokerage of the status of the earnest money.

14. Shortly thereafter, in or around mid-April 2020, Groves' brokerage returned the earnest money, in the amount of \$5,000.00, to Buyer.

15. On April 25, 2020, Kelley sent an email to Staff and stated that Groves had not provided any information to the Listing Brokerage regarding the status of the earnest money.

16. On November 18, 2020, Groves informed Staff during a telephonic interview, that he verbally informed Kelley that he intended to return the earnest money to Buyer. However, during separate interviews with Staff, both Kelley and Kerrico denied Groves' assertion regarding the earnest money. Rather, Kelley and Kerrico both stated that Groves failed to notify Kelley or the Listing Brokerage of his intent to release the \$5,000.00 earnest money to Buyer.

VIOLATIONS

17. Respondent's conduct as set forth in this Stipulation and Consent Order ("Stipulation") violated the following provisions of the laws governing the practice of real estate in Idaho:

- a. Idaho Code Section 54-2047(1) DISPUTED EARNEST MONEY. (1) Any time more than one (1) party to a transaction makes demand on funds or other consideration for which the broker is responsible, such as, but not limited to, earnest money deposits, the broker shall:
 - (b) Keep all parties to the transaction informed of any actions by the broker regarding the disputed funds or other consideration, including retention of the funds by the broker until the dispute is properly resolved.
- Groves released earnest money to Buyer without notifying Seller or keeping Seller informed of the status of the earning money.

18. This matter came before the Idaho Real Estate Commission at a regularly scheduled meeting and, pursuant to Idaho Code Section 54-2058(1), the Executive Director submitted a Probable Cause Memo alleging Respondent engaged in certain misconduct in violation of the Idaho Real Estate License Law and Rules. After reviewing the Probable Cause Memo, the Commission authorized Staff to pursue formal action against Respondent.

STIPULATED DISCIPLINE

19. Respondent acknowledges and agrees that the following discipline imposed for the violations set forth in this Stipulation is reasonable under the circumstances, although not binding upon the Commission until it issues an Order accepting this Stipulation.

Formal Reprimand:

- a. This Stipulation shall constitute a formal reprimand of Respondent for the actions set forth herein.

Fines and Fees:

- b. Respondent shall pay a Five Hundred Dollar (\$500.00) civil fine within thirty (30) days of the service date of the Commission's Order.
- c. Respondent shall pay the costs and attorney fees in the amount of Six Hundred Dollars (\$600.00) within thirty (30) days of the service date of the Commission's Order. All monies paid by Respondent shall be applied towards the costs and attorney fees award first before application to the civil fine.
- d. In the event Staff agrees to accept installment payments of any fine or fees under this Stipulation, should Respondent fail to timely make any one (1) payment as required by its due date, then all sums remaining unpaid shall immediately become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff's right, upon any subsequent failure by Respondent to make a timely payment, to invoke this provision to require immediate and full payment.
- e. All fines and attorney fees are due and payable pursuant to the terms of the Order issued by the Idaho Real Estate Commission. Payment(s) must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho 83706. **All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the date(s) set forth above. MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

Continuing Education:

- f. Respondent shall successfully complete the following Idaho real estate educational course(s) within one hundred eighty (180) days after the service date of the Commission's Order:
 - **Business Conduct and Office Operations**
- g. **These course(s) shall be completed on or before 5:00 p.m. MST/MDT of the deadline day. In addition, within forty-eight (48) hours of completing said courses, Respondent shall be responsible for mailing, emailing, or faxing (208-334-2050) a copy of the completion certificate(s) to the Idaho Real Estate Commission, Attention: Chief Investigator. Should Respondent fail to provide Commission Staff with a completion certificate on or before the deadline, Respondent's real estate**

license shall be suspended pursuant to the terms of the Commission's Final Order.

- h. Respondent is on notice that pursuant to Idaho Code Section 54-2023(5): "No licensee shall obtain continuing education credit for education ordered by the commission as part of a disciplinary action." **Respondent shall not submit such commission-ordered educational courses for continuing education credit.**

ACKNOWLEDGEMENTS AND WAIVERS

In entering into this Stipulation, Respondent (or Respondent's legally authorized representative) acknowledges, understands, and admits the following:

20. This Stipulation is filed pursuant to the provisions of Idaho Code Sections 54-2058, 54-2059 and 54-2063, IDAPA 04.11.01.280.03, and complies with Chapter 52, Title 67, of the Idaho Code.

21. Respondent understands and admits the allegations pending before the Commission as set forth in this Stipulation and has had the opportunity to discuss them with legal counsel. Respondent understands that these allegations constitute cause for disciplinary action upon Respondent's license or ability to practice real estate in the State of Idaho.

22. Respondent voluntarily waives the right to a full and complete hearing regarding all matters set forth in this Stipulation, including the right to reconsideration of the Commission's orders; the right to judicial review of the Commission's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate in the State of Idaho.

23. Respondent agrees that the Commission may impose the disciplinary action set forth in this Stipulation without further process, evidence, or proof. Moreover, the Commission and Staff, without further notice or action otherwise required by the Idaho Code or IDAPA rules,

STIPULATION AND CONSENT ORDER - 6.

is authorized to enforce all terms of this Stipulation, including, but not limited to, suspending Respondent's license or imposing the balance of any withheld discipline or civil penalty fine in the event Respondent fails to timely comply with any term or provision set forth herein.

24. Respondent agrees that this Stipulation may be presented to the Commission *ex parte* by Staff, and Respondent waives any and all rights to a hearing.

25. In the event the Commission in its discretion does not approve this Stipulation, this Stipulation shall be null and void and shall not be used for any purpose by any party. However, a formal Complaint may be filed against Respondent and a hearing may be held before the Commission to consider the allegations set forth in the Complaint. Under such circumstances, Respondent waives any potential right to challenge the Commission's authority or impartiality to preside over or hear the allegations based on its consideration and rejection of this Stipulation. Respondent does not waive any other rights regarding challenges to Commission members.

26. In the event Respondent fails to comply with any of the terms of this Stipulation, the Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Stipulation without further notice or a hearing.

27. Respondent understands and agrees that Respondent may not withdraw or seek to rescind this Stipulation prior to the time the Commission considers and acts upon it.

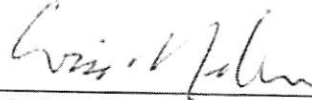
28. A faxed or scanned executed copy of this Stipulation shall be sufficient and the same as the original signed document.

29. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

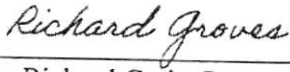
NAYLOR & HALES, P.C.

Date: 5/6/2021

By


Eric F. Nelson, Of the Firm
Attorneys for Staff of the Idaho Real
Estate Commission

Date: 05/06/2021

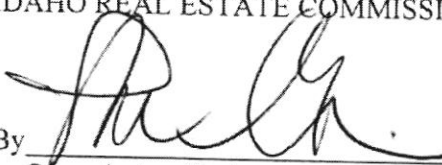

Richard Craig Groves

ORDER

Pursuant to Idaho Code §§ 54-2058, 54-2059 and 54-2063, the foregoing is adopted as the decision of the Idaho Real Estate Commission in this matter and shall be effective on the 26 day of MAY, 2021. IT IS SO ORDERED.

IDAHO REAL ESTATE COMMISSION

By


Commission Chair

STIPULATION AND CONSENT ORDER - 8.

CERTIFICATE OF SERVICE

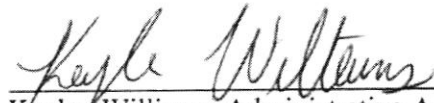
I hereby certify that on the 27th day of May, 2021, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Richard Craig Groves
John L. Scott BOI
6223 N. Discovery Way, Ste 100
Boise, ID 83713

☒ U.S. Mail
☐ Certified Mail, Return Receipt Requested
☐ Fax Transmission

Eric F. Nelson
Naylor & Hales, P.C.
950 W. Bannock St., Ste. 610
Boise, ID 83702

☐ U.S. Mail
☐ Hand Delivered
☒ Email: eric@naylorhales.com
☐ Fax Transmission: 208-383-9516



Kayla Williams, Administrative Assistant
Staff of the Idaho Real Estate Commission

BEFORE THE IDAHO REAL ESTATE COMMISSION

IDAHO REALESTATE COMMISSION,

Petitioner,

v.

WILLIAM C. MIDDLETON and MARBLE
CREEK LLC dba SAGE PROPERTIES,

Respondents.

Case Nos. 20-0272 and 20-0370

STIPULATION AND CONSENT ORDER

The Idaho Real Estate Commission ("Commission") has received information constituting sufficient grounds for the initiation of an administrative action against Respondents William C. Middleton and Marble Creek LLC, doing business as Sage Properties ("Sage Properties"). In entering into this Stipulation and Consent Order ("Stipulation"), the parties stipulate and agree to settle this matter in lieu of administrative hearings before the Commission upon the following terms:

1. Respondent Middleton is a licensed real estate designated broker holding license number DB18322 for Sage Properties in Boise, Idaho. Respondent Sage Properties is a licensed real estate brokerage, holding license number LC41604, owned and operated by Middleton. Respondents, as Idaho licensees, are subject to the jurisdiction and discipline of the Idaho Real Estate Commission.

ALLEGATIONS

2. Middleton and Sage Properties both failed to timely renew their statutorily-required errors and omissions insurance before it lapsed.

STIPULATION AND CONSENT ORDER - 1.

FACTUAL BACKGROUND

3. Middleton has been licensed in Idaho as a real estate salesperson since 1992 and as a designated broker since 2006.

4. On September 30, 2020, Middleton's statutorily-required Errors and Omissions ("E&O") insurance policies for himself and for his brokerage, Sage Properties, expired while their licenses were on active status. Middleton was required to renew these policies prior to October 1, 2020.

5. On October 5, 2020, Middleton renewed his individual and brokerage E&O insurance policies.

6. Middleton has repeatedly failed to comply with the Commission's statutorily-mandated insurance requirements over the years. Including the facts set forth in this Stipulation, Middleton has allowed his individual and brokerage E&O insurance policies to lapse on eleven (11) separate occasions since 2003. Middleton's most recent insurance violation occurred in 2015, which resulted in the Commission imposing a \$4,800.00 civil fine against him.

VIOLATIONS

7. Respondents' conduct as set forth in this Stipulation violated the following laws and rules governing the practice of real estate in Idaho:

- a. Idaho Code § 54-2013(1) and IDAPA 24.37.01.117 and 24.37.01.121: Each actively licensed licensee shall carry and maintain errors and omissions insurance to cover all licensed activities and will certify compliance with this insurance requirement to the Commission.
 - (1) Middleton failed to maintain a statutorily-required E&O insurance policy while his license was on active status.
 - (2) Sage Properties failed to maintain its statutorily-required E&O insurance policy while its license was on active status.

STIPULATION AND CONSENT ORDER - 2.

STIPULATED DISCIPLINE

8. Respondents acknowledges and agrees that the following discipline imposed for the violations set forth in this Stipulation is reasonable under the circumstances, although not binding upon the Commission until it issues an Order accepting this Stipulation.

Formal Reprimand:

- a. The Commission's Order accepting this Stipulation shall constitute a formal reprimand of Respondents for the actions set forth herein.

Fines and Fees:

- b. Respondent Middleton shall pay a Five Thousand Dollar (\$5,000.00) civil fine within thirty (30) days of the service date of the Commission's Order, and that Middleton and Sage Properties shall be jointly and severally liable for paying this fine.
- c. Respondent Sage Properties shall pay a Three Hundred Dollar (\$300.00) civil fine within thirty (30) days of the service date of the Commission's Order, and that Middleton and Sage Properties shall be jointly and severally liable for paying this fine.
- d. Respondents shall pay the costs and attorney fees in the amount of Six Hundred Dollars (\$600.00) within thirty (30) days of the service date of the Commission's Order. All monies paid by Respondents shall be applied towards the costs and attorney fees award first before application to the civil fine.
- e. In the event Staff agrees to accept installment payments of any fine or fees under this Stipulation, should Respondents fail to timely make any one (1) payment as required by its due date, then all sums remaining unpaid shall immediately become due and payable, and no further notice shall be provided. Any agreement or act by Staff to accept a late payment shall not constitute a waiver of Staff's right, upon any subsequent failure by Respondents to make a timely payment, to invoke this provision to require immediate and full payment.
- f. All fines and attorney fees are due and payable pursuant to the terms of the Order issued by the Idaho Real Estate Commission. Payment(s) must be made directly to the Idaho Real Estate Commission by cash, check, money order or credit card, and may be hand delivered or mailed to the Idaho Real Estate Commission, 575 E. Parkcenter Blvd., Ste. 180, Boise, Idaho

STIPULATION AND CONSENT ORDER - 3.

83706. All payments must be received at the Commission office on or before 5:00 p.m. MST/MDT on the date(s) set forth above. **MAKE ALL PAYMENTS TO THE IDAHO REAL ESTATE COMMISSION. DO NOT MAKE PAYMENT TO NAYLOR & HALES.**

Continuing Education:

- g. Respondent Middleton shall successfully complete the following Idaho real estate educational course within one hundred eighty (180) days after the service date of the Commission's Order:

• **Business Conduct and Office Operations**

- h. This course shall be completed on or before 5:00 p.m. MST/MDT of the deadline day. In addition, within forty-eight (48) hours of completing said courses, Respondent shall be responsible for mailing, emailing, or faxing (208-334-2050) a copy of the completion certificate(s) to the Idaho Real Estate Commission, Attention: Chief Investigator. Should Respondent fail to provide Commission Staff with a completion certificate on or before the deadline, Respondent's real estate license shall be suspended pursuant to the terms of the Commission's Final Order.
- i. Respondent Middleton is on notice that pursuant to Idaho Code Section 54-2023(5): "No licensee shall obtain continuing education credit for education ordered by the commission as part of a disciplinary action." Middleton shall not submit such commission-ordered educational courses for continuing education credit.

ACKNOWLEDGEMENTS AND WAIVERS

In entering into this Stipulation, Respondents (or Respondents' legally authorized representative) acknowledge, understand, and admit the following:

9. This Stipulation is filed pursuant to the provisions of Idaho Code Sections 54-2058, 54-2059 and 54-2063, IDAPA 04.11.01.280.03, and complies with Chapter 52, Title 67, of the Idaho Code.

10. Respondents understand and admit the allegations pending before the Commission as set forth in this Stipulation and have had the opportunity to discuss them with legal counsel. Respondents understand that these allegations constitute cause for disciplinary action upon Respondents' licenses to practice real estate in the State of Idaho.

11. Respondents voluntarily waive the right to a full and complete hearing regarding all matters set forth in this Stipulation, including the right to reconsideration of the Commission's orders; the right to judicial review of the Commission's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate in the State of Idaho.

12. Respondents agree that the Commission may impose the disciplinary action set forth in this Stipulation without further process, evidence, or proof. Moreover, the Commission and Staff, without further notice or action otherwise required by the Idaho Code or IDAPA rules, is authorized to enforce all terms of this Stipulation, including, but not limited to, suspending Respondents' licenses or imposing the balance of any withheld discipline or civil penalty fine in the event Respondents fail to timely comply with any term or provision set forth herein.

13. Respondents agree that this Stipulation may be presented to the Commission *ex parte* by Staff, and Respondents waive any and all rights to a hearing.

14. In the event the Commission in its discretion does not approve this Stipulation, this Stipulation shall be null and void and shall not be used for any purpose by any party. However, a formal Complaint may be filed against Respondents and a hearing may be held before the Commission to consider the allegations set forth in the Complaint. Under such circumstances, Respondents waive any potential right to challenge the Commission's authority or impartiality to preside over or hear the allegations based on its consideration and rejection of

STIPULATION AND CONSENT ORDER - 5.

this Stipulation. Respondents do not waive any other rights regarding challenges to Commission members.

15. In the event Respondents fail to comply with any of the terms of this Stipulation, the Commission shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Stipulation without further notice or a hearing.

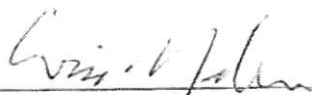
16. Respondents understand and agree that Respondents may not withdraw or seek to rescind this Stipulation prior to the time the Commission considers and acts upon it.

17. A faxed or scanned executed copy of this Stipulation shall be sufficient and the same as the original signed document.

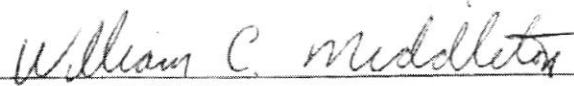
18. This Stipulation contains the entire agreement between the parties, and Respondents are not relying on any other agreement or representations of any kind, verbal or otherwise.

NAYLOR & HALES, P.C.

Date: 4/19/2021

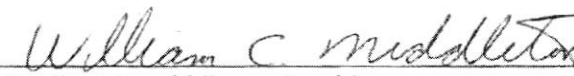
By 
Eric F. Nelson, Of the Firm
Attorneys for Staff of the Idaho Real
Estate Commission

Date: 4/15/21


William C. Middleton

Marble Creek LLC dba Sage Properties

Date: 4/15/21

By 
William C. Middleton, President

STIPULATION AND CONSENT ORDER - 6.

ORDER

Pursuant to Idaho Code §§ 54-2058, 54-2059 and 54-2063, the foregoing is adopted as the decision of the Idaho Real Estate Commission in this matter and shall be effective on the 26 day of MAY, 2021. IT IS SO ORDERED.

IDAHO REAL ESTATE COMMISSION

By [Signature]
Commission Chair

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May, 2021, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

William C. "Bill" Middleton
Sage Properties
PO Box 1285
Boise, ID 83702

☒ U.S. Mail
☐ Certified Mail, Return Receipt Requested
☐ Email: wcmiddletonct@aol.com
☐ Fax Transmission

Eric F. Nelson
Naylor & Hales, P.C.
950 W. Bannock St., Ste. 610
Boise, ID 83702

☐ U.S. Mail
☐ Hand Delivered
☒ Email: eric@naylorhales.com
☐ Fax Transmission: 208-383-9516

[Signature]
Kayan Williams, Administrative Assistant
Staff of the Idaho Real Estate Commission